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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IRON WORKERS LOCAL UNION NO. 17 INSURANCE FUND and its Trustees, et al., Plaintiffs, vs. PHILIP MORRIS, INC., et al., Defendants.	CIVIL ACTION NO. 1:97CV1422 VOLUME I

Deposition of MARTIN L. ORLOWSKY, at 230 North Elm Street, Greensboro, North Carolina commencing at 9:05 A.M., Wednesday, November 11, 1998, before Nancy L. Holloway, Court Reporter and Notary Public.

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ALSO PRESENT:
RALEIGH ELLISON, VIDEOTAPE OPERATOR

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VIDEOTAPE OPERATOR: The time is 9:05. This begins Tape 1 of the deposition of Martin Orlowsky, being taken in the matter of Ironworkers Local Union No. 17 Insurance Fund, et al., versus Philip Morris, Incorporated, et al. This is being heard in the U.S. District Court for the Northern District of Ohio, Eastern Division, Civil Action No. 1:97CV1422.

If the taking attorney would introduce themselves for the audio record.

MR. ARNOLD: My name is Phil Arnold. I'm here with Murray Kleist. And we represent the plaintiff, Taft Hartley Trust.

VIDEOTAPE OPERATOR: Thank you. Other counsel present, please introduce yourself.

MR. LONG: I'm Gary Long. I'm with the Shook, Hardy & Bacon law firm in Kansas City, Missouri. And I'm representing Lorillard.

VIDEOTAPE OPERATOR: Thank you.

MS. CLARK: Jamie Clark with Shook, Hardy & Bacon, representing Lorillard Tobacco Company.

MR. WILSON: I'm James Wilson with Lorillard Tobacco Company.

MR. LATHAM: I'm Will Latham from Womble, Carlyle, Sandridge & Rice, representing

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R.J. Reynolds Tobacco Company.

VIDEOTAPE OPERATOR: The court reporter may swear in the witness.

MARTIN L. ORLOWSKY,
being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. ARNOLD:

Q. Sir, as a formality, would you please state your name?

A. My name is Martin L. Orlowsky.

Q. What is your home address, sir?

A. DELETED.

Q. I understand that in 1963 you took a Bachelor's of Political Science from Long Island University; is that correct?

A. That is correct.

Q. And that before commencing your tenure

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with the tobacco companies, you had advertising experience?

A. That's correct.

Q. You worked at a place called Needham, Harper & Steers?

A. Yes.

Q. What year was that, sir?

A. Approximately 1976 to 1977.

Q. You worked at Gray Advertising?

A. Yes, I did.

Q. And what years was that, sir?

A. 1971 to 1976.

Q. You worked at Young Rubicam?

A. Young & Rubicam.

Q. And the years, sir?

A. 1969 to 1971.

Q. And then Compton Advertising?

A. Yes. 1968 to 1971.

Q. Working at one or more of those advertising firms, you had occasion to come into contact with Liggett & Meyers Advertising work --

A. Yes.

Q. -- and Lorillard?

A. Yes.

Q. Specifically, what was the nature of that?

A. At those points in time, two different advertising agencies. I was working in what was called the media department area of the advertising business. And I worked on briefly Lorillard products at Gray Advertising, although not directly. I was a supervisor or manager. And there were people in groups that I was responsible for that actually had day-to-day relationships with the various advertising plans for Lorillard during that point in time.

It was very brief, I believe a couple of months.

And at Needham, Harper & Steers, they had a test product, a product that was in test market for Liggett & Meyers. Again, I was the media director of that agency. And there were people under me that were more directly responsible for working on the advertising plans.

(Plaintiffs' Exhibit Orlowsky No. 1 was marked.)

BY MR. ARNOLD:

Q. I'd like to hand to you, sir, what we've marked as Plaintiffs' Exhibit 1, which I'm going to show on TV.

What I'd like to do is to find out from you, sir, if in November of 1978, if you were the brand manager for RJR Tobacco Company?

A. No, I was not.

Q. Okay. What were you in 1978?

A. I was the director of media. This is incorrect as listed here.

Q. Okay. Did you ever have any responsibility with brand management?

A. As the director of media, I was responsible for a group that dealt with the

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advertising media planning for all of the R.J. Reynolds brands and had interaction with the brand management groups as part of that function.

Q. Now, you were director of media and advertising, correct?

A. No, I was not director of media and advertising.

Q. You weren't?

A. I was director of media services.

Q. Media services?

A. Right.

Q. And what year would you have commenced that responsibility and what year did you end that responsibility?

A. When I joined Reynolds in November of 1977, I joined as the director of media services and continued that responsibility, I'm not quite sure of the date, but somewhere around up and through 1980, as director of media services.

Q. That's 1977 through 1980?

A. 1977 through 1980, at some point in 1980.

Q. And did you become VP brand -- vice president of brand marketing?

A. Not at the point in time -- well, I'm not sure at the point in time.

Before I was the vice president of brand marketing, I was director of marketing services for R.J. Reynolds Tobacco Company, from some period of approximately 1980 through somewhere around 1982. I am really not certain of the dates.

Q. Senior vice president for marketing?

A. No. I -- following my responsibility as director of marketing services, I became vice president of brand marketing for a period of approximately a year and a half. Again, I'm not real certain as to the precise years or dates.

And then subsequent to my holding the position of vice president of brand marketing, I became senior vice president of marketing.

Q. And what years are you referring to now?

A. I believe somewhere around 1984 I was

senior vice president of marketing.

Q. And for how long did you hold that position?

A. I'm really not certain as to the exact time frame. But at some point somewhere, probably around '85, I was promoted to executive vice president of marketing and sales.

Q. And you were executive vice president of marketing and sales for how long?

A. Possibly a year and a half or so.

Q. That would be 1986?

A. Up through -- up through September of 1986. That date --

MR. LONG: I just want to interpose an objection here to the use of this particular exhibit on the Elmo. I understand it is supposed to be demonstrative; but given the variances with

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the witness's testimony, I'm not sure that it helps the jury rather than confuses the jury.
BY MR. ARNOLD:
Q. I would like to take you to your Lorillard experience, sir. Were you at one time senior vice president?
A. Yes. I joined Lorillard as senior vice president of advertising and brand

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management.
Q. And what year did you join?
A. In October of 1990.
Q. And how long did you hold that position?
A. Approximately two or three years.
Q. 1993?
A. Roughly, yes.
Q. In 1993, you became executive vice president --
A. That's correct.
Q. -- of marketing?
Do you know what month you became executive vice president?
A. No, I don't.
Q. Do you know for how long you've held that position?
A. I believe it was from about 1993 to 1995.
Q. What position do you presently hold?
A. I currently hold the title of president and chief operating officer.
Q. So you're where the buck stops?
A. Not quite.
Q. Not quite.

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Who's above you, sir?
A. There's a chairman and chief executive officer who I report to.
Q. As director of media for RJR from 1977 to 1980, did you have responsibilities with designing the content of advertising?
A. No, I did not.
Q. And what were your responsibilities then?
A. As I mentioned earlier, as director of media services, I was responsible for the development and execution of advertising media plans, basically.
Q. You became vice president of brand marketing. Would you describe your duties?
A. I was responsible for the development of the marketing strategies and marketing programs for the existing R.J. Reynolds Tobacco brands.
Q. And that would include media advertising content?
A. Yes, it would.
Q. Then as the senior vice president of marketing, what would your responsibilities have been?
A. I essentially retained the same

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responsibilities as I had in the position of vice president of brand marketing and added the

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responsibility for new product development.
Q. So you had a research function?
A. No, it was not a research. It was new product development in terms of marketing.
Q. So you were responsible for advertisement promotion?
A. Correct.
Q. Then your next position, what was your responsibility?
A. As executive vice president of marketing, I had the overall responsibility for the marketing function itself, as I described, and, in addition, the sales function for the company.
Q. In 1993, your income for the company was $323,000?
A. I have no idea.
Q. What is your income today, sir, for the company of Lorillard?
A. $690,000.
Q. Do you have any stock options?
A. No, I don't.
Q. Do you have potential of stock

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options?
A. No, I don't.
(Plaintiffs' Exhibit Orlowsky No. 2 was marked.)
BY MR. ARNOLD:
Q. I'd like to show you, sir, what we've marked as Exhibit 2 to your deposition. Going back to RJR, and this is, as you can see, an organizational chart. And you see your name there, sir?
A. Yes.
Q. Have you seen this document before?
A. Not to my recollection, no.
Q. Does this accurately describe the brand marketing department's hierarchy?
MR. LONG: Do you know what date this is?
MR. ARNOLD: No, I don't, sir.
THE WITNESS: Well, as it's defined on this chart, it's representative of the brand marketing hierarchy. But I'm not sure it was an accurate -- to the nth degree. It would appear to be.
BY MR. ARNOLD:
Q. Do you know what year this would be accurate for?
A. Well, I assume, if I had the title of

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executive vice president, it had to be somewhere in the '85 to '86 time frame.
Q. Approximately how many people reported to you at that time?
A. In direct reports? I really don't remember. Probably three or four or maybe five people. I don't recall.
Q. And for the whole department, do you recall how many people were employed?
A. No, I don't.
Q. Do you have a ballpark estimation that you can give us?
A. I do not.

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Q. Do you know what your budget was?
A. No, I do not.
Q. For RJR, when you were the executive vice president, would that have made you the top person in the marketing department?
A. In a sense, yes.
Q. Would that include advertising?
A. Yes, it would.
Q. And for Lorillard in 1993, when you were the executive vice president of marketing, that would have put you as a top corporate officer of that department; is that correct?

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A. Yes, it would.
Q. And now, today, you are the president and CEO of Lorillard?
A. No, I'm not. I'm president and COO, chief operating officer.
Q. COO, okay. Would you briefly describe your duties?
A. I'm fundamentally responsible for the marketing, sales, and operations function of the organization.
Q. How many people are in your company?
A. In the company?
Q. Yes, sir.
A. I don't know the exact number. Somewhere around 3,000, 3,100 people.
Q. And what kind of an operating budget do you have each year?
A. I believe that would be proprietary information.
Q. What's your gross sales?
A. Probably somewhere around a little under $3 billion.
Q. Three billion.
When you were with RJR Tobacco Company, 1984, you were aware, were you not, that

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the majority of smokers started smoking as children?
A. No, I was not.
(Plaintiffs' Exhibit Orlowsky No. 11 was marked.)
BY MR. ARNOLD:
Q. I'd like to hand to you what we've marked as Exhibit 11.
I want to put this under the Elmo.
As you can see, this is a strategic research report for RJR, at the top. Do you see the first page, sir?
A. Yes.
Q. And do you see the date of February 29, 1984 --
A. Yes.
Q. -- from that document?
And this is from a Diane S. Burrows?
A. Yes.
Q. What was her exact function, sir?
A. I don't know her exact function. She was in the market research group at R.J. Reynolds.
Q. And this was sent to G -- is it H. Long?

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A. That's correct.

Q. He was to become a future president of RJR?

A. I believe he might have been president at that point in time. I'm not quite sure.

Q. And there's an M.L. Orlowsky underneath it. That would be you, sir?

A. Yes.

Q. And then a Mr. H.J. Lees, is it?

A. That's correct.

Q. What was Mr. Lee's position?

A. I believe he was vice president of new brands marketing.

Q. Do you see that --

A. I'm not quite sure of that.

Q. -- the document is titled, Younger Smokers -- "Younger Adult Smokers: Strategies and Opportunities"; and that it was published by the marketing development department of R.J. Reynolds? Is that correct?

A. Yes.

Q. And that face page indicates that that was a document that was reviewed by you at that time?

A. It was sent to me, and I assume I read it.

Q. I've marked by Tab 1 at the top of the document -- do you see a rabbit ear? If you could turn there.

MR. LONG: What page is that on?

MR. ARNOLD: That's RJR-448845.

MR. LONG: Does it have just a regular page number on it?

THE WITNESS: No. It's Appendix B.

MR. ARNOLD: Appendix B. And there is a tab up at the top.

MR. LONG: Okay.

BY MR. ARNOLD:

Q. And I'd like to direct your attention to the title of Appendix B, which is "Younger Adults' Importance as Replacement Smokers," and then direct your attention to a table underneath that heading. Can you see where it says, "More than two-thirds of male smokers start by age 18"? Do you see that sir?

A. Yes.

Q. Did I read that correctly?

Then it says, "Only 5 percent start after age 24." Do you see that on the document, sir?

A. Yes.

Q. Then I want to direct your attention to a table headed "Current Male Smokers By Starting Age." And you see the column headed by start age, and then over to the left you see the ages?

A. Yes.

Q. And you see that it has that a 12-year-old, that 9.9 percent of smokers started at 12 years old?

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A. Yes.
Q. And you see at age 13, it's 13.4 percent?
A. Yes.
Q. At age 14, it's 20.8 percent who started?
A. Yes.
Q. And then you see that by age 17, the total is 53.6 percent?
A. Yes.
Q. Do you see that? And that would mean that, of smokers, 53.6 percent started at age 18 or younger?
MR. LATHAM: Objection to the form of the question. Calls for speculation about what the document meant and what the author intended by

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writing that.
BY MR. ARNOLD:
Q. You may answer the question, sir.
A. Well, according to this information -- I'm sorry. Would you rephrase the question or restate the question?
Q. What the table shows is that by age 17, 53.6 percent of current smokers started at age 17 or younger?
MR. LATHAM: Object to the form of the question.
THE WITNESS: Well, according to the source of this data, which I believe is the Department of Health, Education, and Welfare, the HEW, reflects that. And it talks about changes in cigarette smoking habits 1955 to 1966.
So I don't know if these statistics actually reflect anything relative to 1984, I believe this document was written. So I cannot really precisely say whether it's current or not.
BY MR. ARNOLD:
Q. Now, the information that was being given to you in 1984 was that the median age that male smokers started at was 16.7 years; is that correct?

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MR. LONG: Object to the form of the question.
THE WITNESS: Well, what's your question? You're making a statement, I believe.
BY MR. ARNOLD:
Q. The information that was being given to you was that the median age of -- well, current male smokers started at a median age of 16.7 years. That's what the table indicates; isn't that correct?
A. The table, according to the data and the source of that data, would reflect that kind of data, yes.
Q. Now, this is information that was given to you to review as a part of your job in 1984 as senior vice president?
A. It was a report issued by the marketing development department or market research group, characterizing the nature of the market. It was also sent to a number of other

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people as general information with respect to the nature of the market. And it was sourced from government studies.
Q. Quite simply, it's materials that you read?

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MR. LONG: Object to the form of the question.
THE WITNESS: Whether I read -- I assume I read it. It was a long time ago.
BY MR. ARNOLD:
Q. And that's information that you would hold to be important to you in performing your job as a vice president?
A. Not necessarily.
MR. LONG: Object to the form of the question.
THE WITNESS: It was not necessarily important to me in the conduct of my job.
BY MR. ARNOLD:
Q. Wouldn't you want to know if there was a large number of children smoking your product?
A. No, I wouldn't.
Q. And why wouldn't you?
A. Because it had nothing to do with my job. It was irrelevant.
Q. Did you feel you had any responsibility to public health as a part of your job?
A. I think I have a responsibility to market our products in a responsible fashion.

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Q. Does that mean, yes, you have responsibility to public health as a part of your job?
A. I believe my answer is I have a responsibility to be responsible about how I market the product. Given the fact that this product certainly exists in a very controversial area, it has any number of meanings to my responsibility.
Q. Hasn't it been a marketing strategy of RJR to target children?
A. Absolutely not.
(Plaintiffs' Exhibit Orlowsky No. 13 was marked.)
BY MR. ARNOLD:
Q. I'd like to hand to you what we have marked, sir, as Exhibit 13. I'll put that under the Elmo, if we may.
And you can see that there's a date of October 15, 1987, at the top, is that correct, sir?
A. Yes.
Q. And you can see that this is a document regarding a one-year marketing strategy? It says, "Re: Project LF Potential Year 1

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Marketing Strategy"; is that correct?
A. That's what it says, yes.
Q. And do you know who -- is it Emily -- and I can't read the last name -- do you know who that is?

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A. I was not with the company in October of 1987, and I do not know this individual.
Q. Do you know Ann E. Biswell?
A. No, I do not.
Q. Okay. If we look down at the second paragraph, it says, "Project LF is a wider circumference non-menthol cigarette." It -- then it says, "targeted." Do you see the words, "targeted at younger adult male smoker (primarily 13-24 year old male Marlboro smokers)."
A. I see that, yes.
Q. Now, isn't it true that there was an effort by the RJR Tobacco Company to induce children to smoke?
MR. LONG: I'm going to object to the form of the question. Lack of foundation. Mr. Orlowsky just testified he was not with the company at the time this document was prepared.
It seems to me you're asking him to interpret what somebody else thought when they

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wrote something.
BY MR. ARNOLD:
Q. You may answer the question, sir.
A. Would you restate it, please?
MR. ARNOLD: Would you read the question, back for the witness, please.
(The record was read.)
THE WITNESS: As I said, during my tenure with R.J. Reynolds Tobacco Company, there was absolutely no intention to market to anyone that would be determined to be a child under the age of 18.
I can't speak to this document, obviously, since I wasn't there at the time, and I don't know who authored it. I would have to presume that that was a typographical error, because I would think that the policies were fairly consistent while I was there that we did not, when I was there, market to children. And I would suspect that there was no intention to market to children following my departure from the company.
MR. ARNOLD: Okay. I move to strike your comment regarding the typographical error.
BY MR. ARNOLD:

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Q. In 1993, you were with the Lorillard company; is that correct?
A. That is correct.
Q. And you were in the -- would it be the advertising department, marketing department?
A. I was responsible for what was called the advertising and brand management department -- I'm sorry. 1993?
Q. Yes, sir.
A. I don't remember whether I was responsible for marketing and sales at that point. Unfortunately, I have had too many jobs in my past. I can't keep track of the time very accurately. But during 1993, I was obviously responsible for marketing, possibly, among other things.

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Q. You would agree with me it would be immoral to market cigarettes to children?
A. Yes, I would.
Q. There was at one point a Lorillard-proposed Harley-Davidson cigarette?
A. Yes, there was.
Q. And were you involved in the advertisement, potential advertising of that program?

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A. At some point in time, yes.
Q. In fact, 1993, you would have been the top advertising official at Lorillard; isn't that correct?
A. Yes.
Q. Do you recall that Harley-Davidson wanted Lorillard to assure them that the potential advertising was not appealing to children?
A. I recall that they had -- Harley-Davidson Motorcycle Company had a concern about that. I don't remember if it was a matter of assuring them. We certainly went on record with them in terms of our approach to marketing, and that it did not include marketing to children.
Q. And it was your understanding that the Harley-Davidson Company was concerned that the proposed advertising might appeal to children, similar to the Joe Camel cartoon campaign?
MR. LONG: Object to the form of the question. Calls for speculation.
BY MR. ARNOLD:
Q. You may answer.
A. The Harley-Davidson Motorcycle Company was concerned, in general, about being associated with a cigarette brand in 1993. And among their

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concerns regarding being involved with a controversial product, they did express some concern specifically about any advertising for a cigarette appealing to children. I don't recall their using the context of -- in the context of their concern relating to Joe Camel, as such.
BY MR. ARNOLD:
Q. Didn't they want your test market data to assure them that the advertising would not appeal to children?
MR. LONG: Object to the form of the question.
THE WITNESS: I don't recall whether they did want test market data. If they did ask us for it -- I'm not saying they didn't; I don't remember precisely -- but what we told them, if they did ask, is that we have no market data regarding Harley-Davidson or any other brand regarding children, since we don't deal with that as an issue.
BY MR. ARNOLD:
Q. Were you aware that Harley-Davidson hired their own market research firm specializing in child research to analyze the proposed advertising?

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A. I became aware at a point in time that

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Harley-Davidson, in conversations with them, referenced the fact that they were concerned and possibly were thinking about or in fact had some kind of research done. I am not aware of the research specifically, no.

Q. Well, didn't Harley-Davidson inform you that the market research firm found that the advertising campaign could appeal to children?

MR. LONG: Object to the form of the question.

THE WITNESS: Well, as a matter of fact, it was not. Their concern was not about an advertising campaign that was in the marketplace that was being exposed to anyone at that point in time. That concern arose as part of their approval process for advertising.

And we would send them, as part of our contractual relationship, proposed advertising concepts that they would comment on for approval or for other reasons, particularly trademark concerns that they might have.

So that advertising in question, if in fact they raised any, was related to the possibility of running some advertising and the

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possibility of their concerns related to that advertising.

I might add, too, that during that period of time that the Harley-Davidson Motorcycle Company, as I think I indicated earlier, was not happy with the relationship of their trademark with the cigarette product and were raising all kinds of objections, among others, this issue that you're referring to, in the interest of trying to terminate the trademark relationship that we had.

MR. ARNOLD: Sir, I'm going to respectfully move to strike that as being non-responsive.

(Interruption.)

MR. ARNOLD: Let us take a break.

VIDEOTAPE OPERATOR: Off the record at 9:35.

(Discussion off the record.)

VIDEOTAPE OPERATOR: Back on the record at 9:37.

BY MR. ARNOLD:

Q. Mr. Orlowsky, very specifically, didn't the Harley-Davidson market research firm they retained find that the proposed Lorillard advertising campaign may appeal to underage children?

MR. LONG: Object to the form of the

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question. Calls for speculation, and it's been asked and answered.

THE WITNESS: I don't know what the research purported to say or did not say, since I was not privy to seeing any of the research.

(Plaintiffs' Exhibit Orlowsky No. 8 was marked.)

BY MR. ARNOLD:

Q. I hand to you, sir, what we've marked as Exhibit 8. And I'd like to put that on the Elmo.

Do you see the "Harley-Davidson,

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Inc.," at the top of the letter?
A. Yes.
Q. And this is a fax letter, so the quality is somewhat poor. You see the date of August 27, 1993?
A. Yes.
Q. And you see that this was addressed to Lorillard, Inc., attention "Senior Vice President, Advertising and Brand Management."
Now, who would that have been at that time?
A. Most likely myself.
Q. Okay. And then it says, "Attn:

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Ronald S. Goldbrennar, Associate General Counsel"?
A. Yes, that's correct.
Q. Do you know Mr. Goldbrennar?
A. Yes, I do.
Q. Now, this fax from the Harley-Davidson Company to you regards the proposed advertising campaign to introduce Harley-Davidson cigarettes; is that correct?
A. Yes.
Q. Now, seeing this letter, does this help refresh your memory about this event?
A. Only in the same general terms that I mentioned earlier, yes.
Q. All right. Well, let me direct your attention to the second paragraph. I'm going to read to you. It says, "Your August 11 letter accompanied some sample advertising material for the first large-scale introduction of Harley-Davidson cigarettes proposed for October 25, 1993, and requested our approval pursuant to the" -- and I can't read that word.
A. "Pursuant."
Q. "To the" --
A. "Pursuant to the license agreement."
Q. -- "license agreement."

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Then on the next paragraph, they say, "As you know, recent events have alerted us to a possible link between" --
A. Certain cigarettes -- "certain cigarette advertisements."
Q. -- "certain cigarette advertisements" --
A. "Advertisements."
Q. -- "advertisements and encouragement of underage smoking."
Do you see that?
A. Yes, I do.
Q. So the thrust of this letter so far is this issue as to whether proposed advertising by Lorillard would appeal to underage children; isn't that correct?
A. All it's saying here is that they're -- whatever they're referring to is certain recent events, sensitizing them to the possibility that certain cigarette ads may encourage underage smoking. That's what they are saying.
Q. Let me go back to the Elmo. And we'll

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see that those certain events that they're referring to, they state --

A. I'm sorry. What's the "Elmo"?
Q. The Elmo is this machine that we're projecting on the screen.
A. Oh, sorry. Okay.
Q. "After" -- it says, "After reading the literature," and then it says, "the Mangini decision about the Joe Camel cartoon character campaign, we became concerned that Lorillard's promotion might likewise appeal to underaged children."
Did I read that correctly?
A. Yes.
Q. So that those recent events referred to in the letter would be the Joe Camel cartoon character?
A. I assume so, yes.
Q. Was Lorillard proposing a cartoon character campaign?
A. Absolutely not.
Q. Let me go and read to you the second page -- and let me get this if I can -- it says, "In order to explore this important subject and expedite our decision" -- it says, we requested Lorillard's test market data and analysis to help us determine whether the proposed campaign will

appeal to children."
So they're requesting any test market data that you had?
A. That's what it says, yes.
Q. And then it goes on to say in the last sentence of that first paragraph -- it says, "Lorillard did not respond to either request, leaving us with little time and little data to make a decision which" -- do you see that word -- "we consider too important for a superficial reply."
Do you see that?
A. Yes, I do.
Q. Okay. Now, this is important to you, as a senior vice president, who's considering the undertaking of a licensing agreement with Harley-Davidson, whether they're going to in fact comply with the agreement or not; isn't it?
MR. LONG: Object to the form of the question. Vague and compound.
THE WITNESS: I'm not sure what -- what's the question?
BY MR. ARNOLD:
Q. Well, isn't this the type of letter, coming to you as a senior vice president, that

would be important for you to review?
A. This letter, as I indicated earlier, was one of a series of actions on the part of Harley-Davidson to not conduct their relationship with us per our contractual terms -- not to conduct their relationship with us consistent with the contractual terms. And they raised this issue, among others, with respect to anything we

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proposed to do for Harley-Davidson cigarettes.
(Discussion off the record.)
THE WITNESS: And I was concerned, yes, by this letter, because this was another step with another action on their part to make the relationship more difficult.
MR. ARNOLD: I'm going to move, respectfully, to strike your answer as being non-responsive. And I'll try to do -- make a better question.
THE WITNESS: Okay.
BY MR. ARNOLD:
Q. In August 27, 1993, you were the senior vice president for advertising and brand management for Lorillard, Inc.; is that correct?
A. Yes, I was.
Q. And in order to do your job properly, when this letter came to you, it was important for

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you to give attention to it; is that correct?
A. Yes, it was.
Q. And if you look at the second paragraph of the second page, it says, "Under these circumstances, we engaged a market research firm specializing in child research to advise us" whether -- "about whether Lorillard's proposed promotional campaign will appeal to underaged children."
Do you see that?
A. Yes, I do.
Q. Now, that certainly would be important for you to know in order for you to do your job properly as a senior vice president, whether proposed advertising would appeal to underaged children, isn't it?
MR. LONG: Object to the form of the question. Vague and ambiguous and compound.
THE WITNESS: We would be obviously very concerned if the campaign in fact appealed to children.
However, the fact that Harley-Davidson states in their letter that they could have contracted with a market research outfit of, which we knew nothing about, and quoted some form of

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indication of finding from this marketing research firm, which we knew nothing about substantively or in any other sense, I was concerned, A, because that -- they were attempting to make it more difficult to maintain the relationship from a business standpoint.
I was also concerned that they were conducting research and not even sharing that information with us in any specific sense.
And I was further concerned over the fact that we have -- we developed any advertising for any of our brands, whether it was Harley-Davidson or any other, very carefully in a very scrupulous manner, based on our judgments, because we don't do any research against anyone under the age of 18; that we are very careful not to have advertising that would appeal to anyone under the age of 18.
So I was kind of surprised, to be very

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honest about it, when I received this letter and when I received this information, among other things relative to the whole relationship. It actually surprised me.

BY MR. ARNOLD:

Q. Well, as you know from the letter,

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they indicate they had requested from you a test market data and analysis. And from their perspective, that was refused?

A. No. It was not refused.

Q. So you dispute that?

A. Well, in the sense of your reading this thing, yes, I do dispute it.

Q. Now, if we go and we look at the Elmo again, I want you to look at the second paragraph, the second letter, second page of the letter. It says, "Their work so far suggests the campaign will appeal to underaged children," end of quote.

Now, I did read this correctly?

MR. LONG: I'm going to object. I mean, if the purpose of this is to find out that you can read, we'll stipulate that you can read. Do you have a question other than whether you read it correctly? As I understand, it's on the Elmo.

I also object because this is blatant hearsay. They're saying what somebody else told them, so those are the grounds for the objection.

BY MR. ARNOLD:

Q. You may answer, sir.

A. If I read what they say literally, their work so far suggests -- says to me that so

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far it does not imply that there was any finality, whatever findings they had. I don't know what the basis of their suggestion of the fact that it would appeal to children was based on in any way, shape, or form.

As I said to you, from a long-standing policy and practice of being very careful about how we crafted our advertising, I found it surprising that anyone would come up with a finding that that proposed advertising for Harley-Davidson cigarettes would in any way, shape, or form appeal to children.

Q. That would shock you, wouldn't it, if it did?

A. Yes, it would.

Q. So you obviously asked Harley-Davidson for their research materials, didn't you?

A. I don't recall if we specifically asked. We might very well have, and they did not share it with us.

Q. You haven't seen it?

A. I have never it.

Q. You don't know if you requested it; isn't that correct?

A. I don't remember exactly. It's

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possible we did.

Q. It's possible you didn't?

A. It's possible we didn't as well, yes.

Q. Now, Harley-Davidson is taking a

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responsible position, are they not, with respect to this question of whether to engage in the licensing agreement, if it involves a promotion appealing to children?

MR. LONG: Object to the form of the question. Calls for speculation.

THE WITNESS: Harley-Davidson entered into a contractual relationship with Lorillard Tobacco Company, I believe, in 1986. And they knowingly and willingly accepted whatever the terms of that contract, which was -- there was a financial remuneration due them as a result of this contract.

So I found it somewhat surprising that suddenly, in 1993, that the Harley-Davidson Motorcycle Company was extraordinarily sensitized to anything related to their trademark being associated with a cigarette product.

And frankly my belief here is, because I didn't see the research, I don't know if in fact any real research existed in any finite sense. I

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found this to be another in a series of a number of attempts on the part of the Harley-Davidson Motorcycle Company to make the relationship more difficult between Lorillard and themselves.

BY MR. ARNOLD:

Q. From this letter and your vantage point as the reader, as the senior vice president of Lorillard, wouldn't you deduce that they are really seeking to protect children?

MR. LONG: Object to the form of the question. You're asking him to interpret what they think when they write this letter, to interpret another writer's thoughts?

THE WITNESS: My deduction, based on the reading of this letter, was as I've said. They were seeking to make it difficult to sustain a contractual relationship with them.

BY MR. ARNOLD:

Q. Now, did you immediately go out and determine independently whether your proposed advertising scheme would appeal to children?

A. We do not do any research relative to anyone under the age of 18.

Q. So the Harley-Davidson Company may have had more data than you had as to whether your

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proposed advertising would appeal to children; isn't that correct?

MR. LONG: Object to the form of the question, based on hearsay statements; and also calls for speculation.

THE WITNESS: I have no idea what the Harley-Davidson Motorcycle Company had, if in fact they had anything of consequence or of substantive nature, relative to this subject.

BY MR. ARNOLD:

Q. They go on, and they state in the third paragraph, the second page, "I know you understand that Harley-Davidson cannot lend its name to a cigarette promotion which appeals to underaged children, even if the appeal is

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unintentional."
Do you see that sentence?
A. Yes, I do.
Q. Now, did you respond to them and write them a letter?
A. I don't recall if we wrote them a letter.
Q. Then it indicates, "We are compelled to disapprove the campaign."
And then they go on, and they indicate

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that if you'll develop a new campaign which does not appeal to underage smokers, that they would show some interest.
Do you see that?
A. Yes.
Q. And they talk about meeting with a Mr. Tisch, is it?
A. Yes.
Q. And who is that?
A. He at the time was chairman and chief executive officer of Lorillard Tobacco Company.
Q. Now, was there in fact another campaign proposed to Harley-Davidson, as they requested?
A. I don't recall specifically. There might have been.
Q. You're not sure one way or the other?
A. I don't really recall the details of what campaigns were going on. We may have submitted to them a number of campaigns. I really don't remember.
Q. Now, from your position as a tobacco company executive, were you familiar with the Joe Camel ads, even though you worked for Lorillard?

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A. Yes, I was.
Q. And were you working for Lorillard in 1988?
A. No, I was not.
Q. You were still working for RJR then?
A. No, I was not.
Q. You were with whom?
A. In 1988, I was in my own business enterprise.
Q. For a period of years, RJR used a Joe Camel advertising motif; is that correct?
A. When you say "motif," could you be more specific?
(Plaintiffs' Exhibits Orlowsky 9-A and 9-B were marked.)
BY MR. ARNOLD:
Q. Let me show you what I mean by handing you what I've marked as Exhibits 9-A and 9-B. And I'll show 9-A under the Elmo.
Remember seeing a similar type advertisement?
A. Yes.
Q. And you see that the hat, the baseball hat, is backwards on the Camel?
A. Yes, I do.

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Q. And that's common for children to wear their hats --
A. I've seen many adults turn their hats around, as well as anyone else.
Q. It almost sounds like --
A. Even I have actually worn a hat reversed.
Q. Now, let me show you what has been marked as 9-B and ask if you've seen that type of advertisement --
A. What's B?
Q. -- for Camel?
A. I don't really recall. I may have seen ads similar to that, I'm sure.
Q. Isn't it obvious from these ads that there's an attempt to influence young children to smoke?
MR. LATHAM: Object to the form of the question.
MR. LONG: Object to the form of the question. Calls for speculation.
THE WITNESS: It is not obvious to me, no.
BY MR. ARNOLD:
Q. Doesn't it --
A. Adults play pool, adults light up

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cigarettes, adults wear T-shirts and blue jeans. I wear blue jeans all the time when I'm not in offices such as this.
Q. Doesn't it raise in your mind the possibility that young children may be influenced by that type of advertising?
A. I can't answer that. I have no idea whether it would or would not affect any children. But I don't think it necessarily characterizes something that would specifically and definitively appeal to children. It's an adult characterization, as far as I'm concerned.
Q. Doesn't it raise a significant concern to you as a tobacco executive that it raises the possibility that it may influence children?
MR. LONG: Object to the form of the question. It's compound and calls for speculation.
THE WITNESS: As a responsible executive, whether tobacco or otherwise, and particularly in the marketing area, judgmentally, we have to rely on judgments if we cannot rely on specific research. And even with research, one still must rely on judgement, since even market research is not a science but as much an art as anything else.

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Consequently, in the absence of research and based on my personal judgments, given my experience in the marketing area, I would not characterize this as -- in terms of any ad, whether it's this or otherwise, yes, I am concerned about the possibility of any advertising, be it cigarette advertising, wines and spirits advertising, beer advertising, or anything else that children should not partake in.
So judgmentally, I would be concerned about it. But judgmentally, I also have to reach

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a conclusion that some things may or may not be appealing to children.
BY MR. ARNOLD:
Q. Does that mean that you are concerned as a tobacco company executive that the Joe Camel cartoon advertisements possibly could appeal to children?
A. I am not concerned in specific terms related to the Joe Camel advertising, because in my judgment, in my personal judgment, I do not believe that it would influence children to smoke cigarettes or otherwise.
Q. Not even as a possibility?
MR. LONG: Object to the form of the

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question. That's the exact same question you just asked about possibility.
THE WITNESS: I cannot answer possibilities. I can only answer what I feel the thrust of that advertising may or may not do.
BY MR. ARNOLD:
Q. If there was a significant risk -- strike that.
Let's go back and look at what's been marked as Exhibit 9-A.
Now, from your vantage point as a tobacco company executive, if there was a significant possibility that this type of advertisement could appeal to children, wouldn't that raise some concern in you?
MR. LONG: Object to the form of the question.
THE WITNESS: If I felt there was, it would concern me, yes.
BY MR. ARNOLD:
Q. So if you are going to advertise using cartoon motifs, then it would have to cross your mind as a tobacco company executive that it may appeal to underaged children?
A. Well, for one --

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MR. LONG: Wait a second. There's not a question on the table.
THE WITNESS: What is the question?
MR. ARNOLD: You can read the question back.
(The record was read.)
BY MR. ARNOLD:
Q. Isn't that correct?
MR. LONG: Object to the question. Calls for speculation.
THE WITNESS: I'm sorry. You're going to have to do it again.
BY MR. ARNOLD:
Q. Well, let me ask another question.
Cartoons appeal to children; is that not in -- generally true?
A. There are -- I don't know what you mean by "cartoon." You'll have to define what a cartoon is.
Q. Did you ever watch cartoons as a child?
A. What kind of cartoons?
Q. Oh, I don't know. Walt Disney

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cartoons.
A. You mean animated films --
Q. Yes, sir.

A. -- using characters?
Q. Yes, sir.
A. Yes, I have watched animated films, if that's a cartoon.
Q. Did you ever read comic books?
A. Yes, I have.
Q. And they're a cartoon, correct?
A. By your definition. I didn't call them cartoons, necessarily.
Q. Could I see Exhibit 9-A, sir. I'm going to put this back on the Elmo.
Isn't that -- isn't Exhibit 9-A a cartoon?
A. I don't consider it to be a cartoon.
Q. Now, if a tobacco company executive did consider using a cartoon to sell cigarettes, then there should be some concern that that might appeal to underage children; would you agree with that?
MR. LONG: Object to the form of the question. Calls for speculation.
THE WITNESS: I can't -- you're asking me to hypothesize if a tobacco company executive was going to use animated characters in the sense of a cartoon, as I would define it, and it was

children-directed? Then, yeah, there would be a concern.
If it's -- there are cartoons as you're defining it on television today that are geared to adults' television shows. Does that necessarily mean that those TV shows, the Simpsons, I believe, and some others I'm not really familiar with it, appeal to children? I don't know the answer to that. Certainly the intent is not to appeal to children, I would think.
BY MR. ARNOLD:
Q. Well, isn't it important that in fact advertising does not appeal to children?
MR. LONG: Object to the form of the question. You mean tobacco advertising, I assume?
BY MR. ARNOLD:
Q. Correct.
A. I think it's important that any advertising, whether it's a caricature-type advertising or whatever you want to describe as an advertising form, from a tobacco advertising perspective not appeal to children. Yes, I believe very strongly on that.

(Plaintiffs' Exhibit Orlowsky No. 16 was marked.)
BY MR. ARNOLD:
Q. Let me hand you what we've marked as Exhibit 16, which I'll represent to you is an RJR Tobacco Company document. And I'd like to direct your attention, if I may, to page 5 of that

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document.
And you see the highlighted paragraph, where it says that, quote, "In view of the need to reverse the preference for Marlboros among younger smokers, I wonder whether comic strip type copy might get a much higher readership among younger people than any other type of copy," close quote.
Do you see that?
A. I see that, yes.
MR. LONG: Let me interpose an objection. Do you know the date of this document or the author?
MR. ARNOLD: All I have is what was given to us.
MR. LONG: So you don't know who authored it, and you don't know the date?
MR. ARNOLD: No. But you can see it's RJR 2337522, so you can look that up in your files and documents.

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MR. LONG: I'm going to make just a broad objection to the use of this document, given the fact that Mr. Orlowsky was not perpetually employed by Reynolds and may have no idea who wrote this or what in fact they meant in anything they said in it.
BY MR. ARNOLD:
Q. Now, when you were working in the advertising department for RJR, did you consider comic strip type copy?
A. No.
Q. Isn't the Joe Camel cartoon ads that we've seen similar to comic strip type copy?
A. Not as far as my interpretation is concerned, no.
(Plaintiffs' Exhibit Orlowsky No. 26 was marked.)
BY MR. ARNOLD:
Q. I'd like to hand to you, sir, what we've marked as Exhibit 26.
I didn't mean to throw that at you. I mean to slide it, but --
THE WITNESS: It's okay.
BY MR. ARNOLD:
Q. I'd like to show this on the Elmo.

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What we're looking at is a December 11, 1991 article from the Journal of the American Medical Association.
Do you see that?
A. Yes, I do.
Q. And are you familiar with the Journal of the American Medical Association?
A. Only by name.
Q. You know that it represents the journal for the majority of American physicians and surgeons in this country; isn't that correct?
A. I don't know that for a fact. I suppose they're members of the organization. I don't know.
Q. You can see on the front page, they have a person smoking a cigarette?
A. It appears so, yes. It's not a very clear copy.

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Q. I want to direct your attention to page 3149 of that article. And you see that the Journal of the American Medical Association has an article titled, "RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children."
Do you see that?
A. Yes.

MR. LONG: I'm going to just lodge an objection here to the use of this article from JAMA. I assume you're trying to use this as a learned treatise or something of that sort. But I see no foundation for the use of this document at all with this witness.
If you want to put it in through one of your experts, that's a different issue.
BY MR. ARNOLD:
Q. Now, sir, you see in the title it uses the word "cartoon." Now, do you disagree with that characterization of the advertisement that we saw earlier?
A. Yes, I do.
Q. I'd like to direct your attention down to the highlighted material that says that "Camel's share of the illegal children's cigarette market segment has increased from 0.5 percent to 32.8 percent, representing sales estimated at 476 million per year."
Do you see where I've read that?
A. Yes, I do.
Q. Have I read that correctly?
A. That's what it says.
Q. What that's indicating is that there

is a substantial amount of money made from the selling of cigarettes to children; is that correct?
MR. LATHAM: Object to the form of the question.
THE WITNESS: I have no idea whether that's an accurate factual statement at all.
BY MR. ARNOLD:
Q. You have no information one way or the other to dispute that, though?
A. That is correct.
Q. And you see it says -- under "Conclusion" that it says that "Old Joe Camel" advertisement -- excuse me -- I'll read it again. Quote, "Old Joe Camel cartoon advertisements are far more successful at marketing Camel cigarettes to children than to adults," end of quote.
Do you see that?
A. I see that, yes.
Q. Now, that would be important for any cigarette tobacco company executive to know, because that would be an indication as to what types of advertisements should not be used to promote the sale of cigarettes.
Would you agree with that?

MR. LONG: Again, I object to the form of the question. It calls for speculation. And there's just no basis for using this type of document with

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this witness.
BY MR. ARNOLD:
Q. You may answer, sir.
A. It would be important if it was valid factual information.
Q. And would you agree with me that any tobacco company executive should obtain that type of information?
A. I would agree if there's a question in the mind of that executive as to the nature of what is at -- in question. It may or may not be important to acquire that information.
Q. Well, if the information bears on whether advertising is going to appeal to underage children and induce them to smoke, then isn't that important for any tobacco company executive to know?
A. It would be important, as I said, if one felt or believed that there was an issue there. If one did not, then it might not necessarily be that important in those terms.
Q. And if there was an issue there and

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the tobacco company executive did not obtain necessary information to find out whether advertising appealed to children or not, then that executive is not doing his job properly?
MR. LONG: Object to the form of the question. Calls for speculation.
THE WITNESS: Not necessarily. I can't speak for what a tobacco company executive may or may not due under varying circumstances.
BY MR. ARNOLD:
Q. You don't have any information to dispute what we've read here in the JAMA article up to this point, do you?
MR. LONG: Again, I object to the form of the question. If your position is that JAMA is a learned treatise in the area of advertising and marketing, that's a shocker.
But if you can answer the question, go ahead.
THE WITNESS: The only answer I could have here is I have no reason to believe this data necessarily or not believe the data. I have no understanding of the basis of the research that was conducted, the type of -- the nature of what that research reflected.

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And simply because it is exists or was published in this particular journal does not necessarily legitimize the validity of the data.
BY MR. ARNOLD:
Q. Well, have you seen any studies to the contrary that the Old Joe cartoon advertisements do not appeal to underage children, inducing them to smoke?
A. I have not seen any studies specifically, no.
Q. The only study we have is the JAMA study at this point; is that correct?
A. I object to the form of the question. What do you mean "we"? You mean that you have?

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BY MR. ARNOLD:
Q. That we have here today?
MR. LATHAM: I object to the form of the question. That's not a JAMA study; that's an editorial.
THE WITNESS: This was a study conducted by some writers who submitted it to the Journal of American -- whatever --
BY MR. ARNOLD:
Q. I take it --
A. -- American Medical Association, JAMA,

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for one thing.
Secondly, I have no awareness as to whether or not R.J. Reynolds Tobacco Company in fact has studies or conducted studies relative to the issue that you're discussing here. I don't know that. I'm not -- I wasn't working at Reynolds at the time and cannot really respond to that.
BY MR. ARNOLD:
Q. As president and chief operating officer for Lorillard, you have not seen any studies regarding the effects of advertisement on children smokers?
A. Advertisements? Any advertisements?
Q. To induce, you know, children to smoke.
MR. LONG: Object to the form of the question. Vague, compound, calls for speculation.
MR. ARNOLD: I'll rephrase the question.
BY MR. ARNOLD:
Q. As the president and chief operating officer for Lorillard Tobacco Company, have you seen any studies with respect to whether advertising appeals to children and induces them to smoke?

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MR. LONG: You mean cigarette advertising?
MR. ARNOLD: Yes, sir.
THE WITNESS: I've not seen any specific studies, other than excerpts, possibly, that appeared in general news media, regarding particularly the Camel advertising campaign. But I've not seen anything in a total sense, in a specific sense, no.
BY MR. ARNOLD:
Q. So general news media would be like newspapers?
A. Yes, magazines.
Q. Like Newsweek magazine?
A. Possibly.
Q. Let me go back to the Elmo, if we could.
And I'd like to read to you from page 3150, the next page, where it says, quote, "Children were much more likely than adults to recognize Camel's Old Joe cartoon character," end of quote.
Do you see that?
A. Yes, I do.
Q. Now, from the photograph of the camel that we saw, 9-A and 9-B, would you agree, using

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your experience in the advertising field, that if you just showed the camel, would appeal more to children than to adults?
A. Not necessarily, no. The term here is "recognize" not "appeal."
Q. Going to page 3151 of the JAMA article, it says, quote, "Our data demonstrate that in just 3 years, Camel's Old Joe cartoon character" has -- excuse me -- "had an astounding influence on children's smoking behavior."
Do you see that?
A. Yes, I do.
Q. Now, if any tobacco company executive saw a statement like that and they were, the company, advertising, wouldn't they take very effective steps to cease that type of activity?
MR. LONG: Object to the form of the question. And, again, object to the use of this document.
THE WITNESS: This data does not mean -- does not provide me with any factual information.
To respond to your question, based on this data, I would not react to this data. I have no basis of understanding as to how they're arriving at their numbers, what they based their
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findings on, or anything else like that. So this data is immaterial in that sense to reach any kind of conclusion about whatever reaction anyone might have.
BY MR. ARNOLD:
Q. Now, if you look at the next sentence, it says, "The proportion of smokers under 18 years of age who choose Camels has risen from 0.5 percent to 32.8 percent," close quote.
Do you see these figures?
A. Yes, I do.
Q. Now, that would be --
MR. LONG: Counsel, if you're going to continue to ask the witness about comments and conclusions in the article, I would ask you to give him an opportunity to read the entire thing, since it appears to summarize the data. And unless you give him an opportunity to read the data, he's not going to know what the conclusion means.
Do you want to give the witness an opportunity to read all of the data that they're summarizing in these conclusions before he comments?
MR. ARNOLD: Your objection is noted,
0066
Counsel. Let's move on, unless you're instructing the witness not to answer.
MR. LONG: No, I'm not. I'm just going to tell him he has an opportunity, and he has the right to read the entire document if you're going to continue to ask questions about conclusions. We both know that's the law.
BY MR. ARNOLD:
Q. Sir, I want you to look at that data and that particular highlighted paragraph.

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And just based on that data, if that data is true, then that would be an indication that the Old Joe cartoon character was a very effective means for changing the behavior of underage children with respect to choosing Camels when they smoke.

MR. LONG: Mr. Orlowsky, I would advise you that if you want to read this entire document that Counsel continues to question you about concerning conclusions, you certainly have the right to do so.

THE WITNESS: Yes. I really can't respond to this, because I don't know what the basis of these conclusions that are being highlighted here imply.

And I really can't comment on whether

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or not anything is relevant here unless I understand in the total sense what this study is based on, what the results are based on, and what the data reflects.

BY MR. ARNOLD:

Q. Hypothetically, if after an advertising campaign using Camel's Old Joe cartoon character changed the proportion of underage smokers from .5 percent to 32.8 percent to select Camels, then that would be an effective advertising instrument, wouldn't it?

MR. LONG: I object to Counsel's attempt to use a hypothetical to get around the witness's request in order to read this document before you continue to question him about it.

We both know what you're doing. Just going in a hypothetical shouldn't abrogate the rights of the witness to read a document you want to question him about.

THE WITNESS: Hypothetically, I don't believe advertising can have that kind of effect in any product category --

BY MR. ARNOLD:

Q. Well, don't you --

A. -- to influence the behavioral change

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to the extent that might -- may or may not be indicated in any hypothetical context.

Q. Are you saying then that you don't believe that any advertising by tobacco companies has influenced underaged children to smoke?

A. I believe personally it is highly unlikely that the advertising, the cigarette advertising as I know it, had a dramatic impact on the behavior of children.

Q. Now, when you were with RJR, do you recall attending an Eric Clapton concert?

A. Yes.

Q. And the purpose for attending that Eric Clapton concert was to hand out free samples of cigarettes?

A. I don't know if that was the purpose. It was one of -- I don't know if they handed out samples, for one thing. If they did, it's possible, yes.

Q. And they handed out T-shirts with RJR advertising on it?

http://legacy.library.ucsf.edu/tid/xmn05a00/pdf Source: www.tobaccoindustrydocuments.ucsf.edu/docs/qyhd0001

A. I don't really remember whether they did or did not.
Q. Is it a standard marketing technique in the tobacco industry to use posters, for

0069

instance, and place them at areas where young people will meet?
A. I don't --
MR. LONG: Object to the form of the question. Vague compound and calling for speculation.
THE WITNESS: You're stating a very generalized thing here. I'm not sure I understand what you specifically are referring to.
BY MR. ARNOLD:
Q. Putting poster advertisements near theaters, for instance?
A. Posters? What kind of posters?
Q. Advertising cigarette products.
A. I'm really at a loss. I can't connect to what you are referring to.
Q. Let me show you a JAMA article on page 3152.
MR. LONG: Again, Mr. Orlowsky, before you answer questions about this document, you have certainly the right to read the entire thing.
BY MR. ARNOLD:
Q. And perhaps at lunch, feel free to do so, and we'll come back and ask you some more questions on it.

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I want to direct your attention for purposes of this question. You see where it says --
MR. LONG: You're not going to allow him to read the document right now before you ask him more about it?
BY MR. ARNOLD:
Q. If you see, sir, it says, quote, "The industry targets poster advertisements for 'key youth location meeting places in the proximity of theaters, record stores, video arcades, et cetera.'"
In your experience, has RJR or Lorillard placed such poster advertisement?
MR. LONG: I'm going to continue to object to your refusal to allow the witness to read a document that you want to question him about. We both know that's improper. He should be allowed the opportunity to read the entire document.
THE WITNESS: I can't really respond. In terms of our policy at Lorillard, no, we don't post posters as it's described here. I don't know what it specifically relates to.
But if I read this literally, in terms of proximity of theaters, record stores, video

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arcades, the answer is, no, that is not something I'm aware of. We certainly don't do it at Lorillard. And I don't know what this study is referring to in terms of reaching that conclusion or making that statement relative to whatever they're talking about here.

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BY MR. ARNOLD:
Q. RJR would place such advertising near locations where young people would gather?
A. When I was --
MR. LONG: I object to the form of the question. Calls for speculation.
THE WITNESS: I can't -- I can only respond to the fact that when I was with R.J. Reynolds Tobacco Company, we did not put posters near video arcades or whatever. That's about all I can comment on.
BY MR. ARNOLD:
Q. You went to an Eric Clapton concert, didn't you?
A. That wasn't a video arcade.
Q. True. But you did, didn't you?
A. Yes, I did. And Eric Clapton was an old guy. That's why I was there.
Q. Well, you were there on behalf of

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R.J. Reynolds, weren't you?
A. I was there because R.J. Reynolds sponsored a concert series that was directed to adult smokers or adults in general. And he was an old guy.
And if you're implying that the use of Eric Clapton as a promotional event was some sort of attempt to influence younger smokers, in terms of under 18 years of age, I would seriously question your logic. I'm sorry. I don't mean to be offensive when I say that.
Q. If you would, look at that article at lunch.
A. I shall.
Q. Then we'll go back over it.
MR. LONG: Wait. If you want him to look at the article, he can look at the article during the deposition. We've got other things to do at lunch, and I'm not going to guarantee that I'm going to have him sit and read the article at lunch, Counsel.
BY MR. ARNOLD:
Q. Now, we've looked at Exhibit 9-A --
MR. LONG: We've been going for about an hour and a half. Is this a good time for a break, or

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have you got --
MR. ARNOLD: Just a couple of more questions.
MR. LONG: Thank you.
BY MR. ARNOLD:
Q. I want to show you that. Can you see that on the TV monitor?
A. Yes, I can.
Q. Okay. Now, that is obviously an advertising promotion, correct?
A. It's -- in my language, it's an advertisement.
Q. Okay. It's an advertisement, and it's aimed at inducing people to smoke Camel Lights?
MR. LATHAM: Object to the form of the question.
THE WITNESS: I would not characterize it that way, no.

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BY MR. ARNOLD:
Q. Okay. If you wanted to discourage children from smoking, looking at Exhibit 9-A on the Elmo, you think that 9-A or this statement, where it says, "Sexual performance crippled" which one of those would discourage children from smoking?
MR. LONG: I object to the form of the

0074

question. I assume, just for purposes of identification, is this just something you wrote?
BY MR. ARNOLD:
Q. You may answer that question.
MR. LONG: Object to foundation. We don't know what this exhibit is you're putting on.
MR. LATHAM: Object as argumentative.
THE WITNESS: I have no idea whether anything will discourage children from smoking in terms of that statement or anything else.
MR. ARNOLD: Why don't we take a break.
VIDEOTAPE OPERATOR: Off the record at 10:24.
(Brief recess.)
VIDEOTAPE OPERATOR: Back on the record at 10:36.
BY MR. ARNOLD:
Q. Sir, do you know the numbers of American children under the age of 18 who smoke as an approximate number?
A. No, I do not.
Q. Isn't that a figure that should be of some concern to you?
MR. LONG: Object to the form of the question. Argumentative.
THE WITNESS: It would be a figure of concern

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to me if I felt that there was anything that we were involved with that created that situation, but I don't believe that in the first place.
Consequently, whether one child smokes is of concern to me. I don't -- what difference does it make what the number is in those terms?
BY MR. ARNOLD:
Q. Well, the larger the number, the greater the problem, perhaps. Wouldn't you agree with that?
A. I believe it would be of concern to the parents of those children, yes.
Q. Now, you focused on the parents of the children. Wouldn't it be of concern to you as president and chief operating officer of Lorillard?
A. If I felt Lorillard was doing anything in any way, shape, or form that was an irresponsible action that caused that to happen, I would be very concerned about that.
Q. You would agree with me that Lorillard should not use psychological manipulation through advertising to induce children to smoke? Would you agree with that?
MR. LONG: Object to the form of the

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question. Vague and ambiguous.
THE WITNESS: I believe that Lorillard

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shouldn't do anything to encourage children to smoke.
BY MR. ARNOLD:
Q. Would you agree that Lorillard shouldn't do anything to interfere with parental control to prevent children from smoking?
MR. LONG: Object to the form of the question. Vague and ambiguous. Calls for speculation.
THE WITNESS: I really can't answer that. I don't know how Lorillard would do something to interfere with parental control.
BY MR. ARNOLD:
Q. Well, the advertising by tobacco company shouldn't undercut the parents' ability to prevent children from smoking; wouldn't you agree with that?
A. Without question. And I don't believe that the advertising does undercut the parents' responsibility to their own children.
Q. One way to determine the effect of advertising is to determine the effect on market share of the product; is that correct?

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A. Not necessarily.
Q. It's one, though, isn't it?
A. One could look at changes in market share as a -- and possibly attribute that to advertising. But it's not necessarily a direct correlation in my mind.
Q. When you advertise, you intend to make more money for Lorillard; is that fair?
A. When we market our products, we intend to sell our products to consumers who are interested in buying our products.
Q. Well, you intend to make additional money for your company through your advertising program, don't you?
A. We intend to make money if we effectively market our products to the consumers that are interested in them.
Q. And you wish to spend your money as effectively as you can, don't you?
A. Yes.
Q. And when you spend your money on advertising, you want to spend that money as effectively as you can; isn't that true?
A. Yes.
Q. You'd like to see some effect from the

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advertising that you buy, don't you?
MR. LONG: Object. These questions are just repetitive and cumulative. You're asking the same thing time and time again.
THE WITNESS: Again, as I said to you, how one determines the effect of advertising may vary.
I don't necessarily correlate the effect of advertising to the literal market share change of a given business.
BY MR. ARNOLD:
Q. Have you seen or been told that 68 percent of smokers started before the age of

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18 in the year of 1990?
MR. LONG: Object to the form of the question.
THE WITNESS: I'm not aware of that, no.
BY MR. ARNOLD:
Q. Are you aware of that figure being bandied about in the last decade?
MR. LONG: Object to the form of the question. Lack of foundation.
THE WITNESS: I don't really recall that figure, no.
BY MR. ARNOLD:

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Q. Have you -- do you ever recall seeing any figures recently on the number of smokers who started as children?
MR. LONG: I object to the form of the question. It's vague and ambiguous. Ever recall recently? I don't -- you mean ever or just -- what's "recently"?
BY MR. ARNOLD:
Q. Last decade.
A. Well, this morning you showed me some statistics that related back to 1960 or something. That's the most recent time I saw numbers.
However, I do not recall any specific data in terms of actual numbers in the sense of your asking the question, no.
BY MR. ARNOLD:
Q. If 68 percent of smokers started at age 17 or younger, does Lorillard bear any responsibility for that?
A. I do not believe that Lorillard, by virtue of any actions they take or we take, necessarily affects that number, no.
Q. It would be of concern to you as president and chief operating officer, though,

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that that statistic, if it were true, that 68 percent of smokers started as children?
A. It would be of concern to me as a member of our society, period, as to whether children engage in behavior that may or may not be appropriate for them.
Q. Now, if children are buying RJR Lorillard cigarettes, there's a profit that's derived to the company --
MR. LONG: I object to that.
BY MR. ARNOLD:
Q. -- isn't that true?
MR. LONG: Object to the form of the question. You said "RJR-Lorillard."
BY MR. ARNOLD:
Q. You may answer the question.
A. If children under the age of 18 are buying cigarettes illegally, then that is a problem, obviously. And whether or not there's any profit associated with it by virtue of their purchase, that would be a factor. It's a fact of life in those terms.
Q. Do you know how much profit is generated from sales of cigarettes to children?

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A. No, I do not.

Q. If in 1991, it was estimated that $476,000,000 per year in sales were made to children buying Camels, would that be a shocking figure to you?

MR. LONG: Object to the form of the question. Lack of foundation. Is this a hypothetical, or do you have data?

BY MR. ARNOLD:

Q. You may answer the question.

A. I have no idea what you're referring to, if you're pulling a number out of the air or what.

The fact that any sale is made to someone under the age of 18 is something that a tobacco company doesn't really have very much direct control over. So if it's a concern. It's a concern.

But to the extent that you're implying that tobacco companies are making money from these sales, I think the implication is that we are not directly related to that. We don't do that. We don't practice that. And we're not interested in making any money on that basis.

MR. ARNOLD: I'm going to move to strike that as being non-responsive.

(Plaintiffs' Exhibit Orlowsky No. 12 was marked.)

BY MR. ARNOLD:

Q. Let me hand to you what we've marked as Exhibit 12.

Before we get into Exhibit 12, hypothetically, if a tobacco company was deriving hundreds of millions of dollars in sales because children are buying their cigarette products, doesn't the tobacco company have some responsibility to try to discourage that type of activity?

A. The tobacco company, hypothetically, should rely on the law of the land. And there are laws in effect in virtually every, if not every, state of the union to prohibit children from purchasing cigarettes. Children do not purchase cigarettes directly from tobacco companies, for one thing.

Secondly, I'd be very concerned about parental supervision of those children who are engaging in that behavior, as well as possibly retail stores that might be selling on that basis.

So the concerns would be centered where they can be effective in dealing with the issue.

Q. You don't think the tobacco company should check its advertising to make sure it's not appealing to children to smoke?

A. As I mentioned earlier, in the development of Lorillard advertising or any advertising that I've been associated with with respect to any company for cigarette products, we have always exercised a very responsible view and

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assessment, obviously based on judgments, as to whether or not that advertising would in any way influence someone underage to smoke.

I feel very strongly that what I've done over time has been consistent with that view, that we have not done anything to motivate anyone under the age of law to smoke.

Q. Now, the proposed Harley-Davidson advertising content, in your opinion, was not appealing to children to smoke?

A. You're referring to the letter that Harley-Davidson wrote, about that proposed advertising?

Q. Yes, sir.

A. I did not feel that it was directed to children, no.

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Q. Looking at what we've marked as Exhibit 12 -- I want to show this on the Elmo -- see at the top, it says, "1975 Marketing Plans Presentation, Hilton Head, September 30, 1974."

Do you see that?

A. Yes.

Q. And you saw on the, you know, the front page a reference that this was a presentation to the RJR Board of Directors?

A. I assume that's -- "B of D" is Board of Directors, yes.

Q. Now, do you see, under -- or, I guess, next to Chart 1, it says, Our paramount marketing objective in 1975 and ensuing years is to establish "RJR's share of marketing growth in the domestic cigarette industry."

Do you see that?

A. It says, "to reestablish," yes.

Q. Okay. And that that was an objective that was stated not just for 1975 but for the following years?

MR. LONG: I object to the form of the question.

I mean, are you just rephrasing what is here? Are you asking him to interpret this?

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I just don't understand.

BY MR. ARNOLD:

Q. You may answer, sir.

A. Well, I don't know for the years '75 through '77, whether that was their objective. I wasn't there. But certainly it says for 1975 that they want to reestablish their market growth.

Q. And it certainly was true in 1977 through 1986, when you were with the RJR company?

A. Yes.

Q. And you see Chart No. 2, where it says "Opportunity Areas," "We will speak to four key opportunity areas to accomplish this. They are," colon, "1, increase our young adult franchise."

Do you see that?

A. Yes.

Q. And that was a marketing objective, wasn't it, when you were with RJR Tobacco Company?

A. Young adult smokers, yes.

Q. And then if you look down farther, it

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says, "First, let's look at the growing importance of the young adult in the cigarette market. In 1960, this young adult market, the 14-24 age group, represented 21 percent of the population."
Do you see that?

A. Yes, I do.
Q. Now, they're defining young adult market as 14-year-old, 15, 16, 17, up to 24-year-old people; is that correct?
A. They're defining that population segment as such, yes.
Q. They're calling that the young adult market, correct?
MR. LATHAM: Object to the form of the question.
THE WITNESS: I don't know what they mean, frankly.
BY MR. ARNOLD:
Q. Well, when they say, "In 1960," comma, "this young adult market," comma, "the 14-24 age group," comma, the phrase, "the 14-24 age group" is referring to the young adult market, isn't it?
MR. LONG: Okay. Read the whole document before you answer anymore questions on it.
BY MR. ARNOLD:
Q. You can answer that question from that paragraph, sir?
MR. LONG: Not unless you allow him to read the entire document. They may have further definitions of "young adults" in there for all we know.
MR. LATHAM: I'm going to object to the form of the question and lack of foundation.
MR. ARNOLD: Are you instructing him?
MR. LONG: No, I'm not instructing him.
You can answer it after you read the document.
MR. ARNOLD: I have no problems with reading the document. We have a limited amount of time, 6-1/2 hours. If he wants to read it, will he read it on your time? That's fine.
MR. LONG: No, no. It's your document. You want to ask the questions. He's going to read it on your time. I have allowed him to answer the question as soon as he reads the document. I'm not going to instruct him not to answer.
BY MR. ARNOLD:
Q. Well, let me take you further down the page.
MR. LONG: Do you want him to read and answer your question?
BY MR. ARNOLD:
Q. And it says, "Young Population Skew." "As seen by this chart, they will represent 27 percent of the population in 1975. They represent tomorrow's cigarette business. As this 14-24 age group matures, they will account for a key share of the total cigarette volume -- for at least the next 25 years."
Do you see that?

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A. I see that.
Q. Now, at least these two paragraphs that we're looking at, they're defining the young adult market as the 14-to-24 age group; is that correct?
MR. LONG: Mr. Orlowsky, do not answer any questions about the document until you have read the entire thing. Then you may answer any questions he asks.
MR. LATHAM: Object to the form of the question.
There's no foundation or grounds -- no evidence that Mr. Orlowsky was present at this meeting; and you're asking him to speculate about the contents of this document.
BY MR. ARNOLD:
Q. It is 11:50 -- I'm sorry -- 10:50 by my watch. Why don't we go off the record so Mr. Orlowsky can read the document?
MR. LONG: Thank you.

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VIDEOTAPE OPERATOR: Off the record at 10:52.
(Brief recess.)
VIDEOTAPE OPERATOR: This begins Tape 2 of the deposition of Martin Orlowsky. We're on the record at 11:04.
(Plaintiffs' Exhibit Orlowsky No. 15 was marked.)
BY MR. ARNOLD:
Q. Mr. Orlowsky, before we get to the Hilton Head Board of Directors -- I'd like to start out with this document that we've marked as Exhibit 15. I want to show that to you on the Elmo.
And you see the date of this is -- RJR -- it says, "July 22, 1980," at the top?
A. Yes. I'm sorry.
Q. And you see that it's to Mr. E.A. -- and that's probably supposed to be Horrigan, Jr. --
A. Yes.
Q. -- probably a typo -- from G.H. Long?
A. Yes.
Q. Now, in 1980, Mr. Horrigan was president of RJR Tobacco?
A. I believe he was president of

0090

R.J. Reynolds Tobacco Company, yes.
Q. And Mr. G.H. Long was to become the future president of that company, wasn't he?
A. Yes.
Q. You see the subject says, "MDD report." "MDD" stands for Market Development Department?
A. Yes.
Q. It says, "MDD Report on Teenage Smokers," paren, "14-17" close paren.
A. I'm sorry.
Q. You see where it says, "Teenage Smokers, (14-17)"?
A. Yes.
Q. Would you agree, from the context of what you've read, that that "14-17" refers to

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ages?
A. I believe so, yes.
Q. Okay. You see where it states that "Attached is an MDD report covering the aforementioned subject. Last January, a report was issued on this subject that indicated that Philip Morris had a total share of 59 among 14-17 year old smokers"?
A. Do I see that? Yes.

Q. Now, when they say a 59 share, what do they mean by that?
MR. LATHAM: Object to the form of the question.
THE WITNESS: I assume, based on what this says, it says that 59 percent of this universe that was measured related to Philip Morris -- related to Philip Morris.
BY MR. ARNOLD:
Q. So the marketing development department is following 14- to 17-year-old smokers with respect to a Philip Morris cigarette product, Marlboro; is that correct?
MR. LONG: Object to the form. Lack of foundation, calls for speculation.
THE WITNESS: I don't know whether they were following 14- to 17-years-olds. There obviously was some kind of report that provided this data. I don't know whether it was their data or someone else's, government, data.
BY MR. ARNOLD:
Q. I'd like to go to the second paragraph. And it says, "Importantly, the report further indicates that RJR continues to gradually decline, and between the spring and fall 1979

periods, RJR's total share declined from 21.3 to 19.9."
And it goes, "Hopefully, our various planned activities that will be implemented this fall will aid in some way in reducing or correcting these trends."
Now, the trends that they're referring to, basically, is the share of 14- to 17-year-old smokers; isn't that correct?
MR. LONG: Object to the question. Calls for speculation.
And I also object to the extent that your testimony, Counsel, mischaracterizes the document.
THE WITNESS: I have no idea what it refers to.
BY MR. ARNOLD:
Q. Now, when you look at the subject of the document, it's clear that this is an interoffice report with respect to the market development department's following of teenage smokers?
MR. LATHAM: Object.
THE WITNESS: I'm sorry. I don't understand your question when you say "interoffice."

BY MR. ARNOLD:

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Q. Well, look at the top of the --
A. It's an interoffice memo.
Q. Okay. It's an internal --
A. Yes.
Q. -- company communication.
A. Yes. But that does not necessarily imply the report is an internal company report.
Q. Isn't it true that since you've been with -- at the time you were with RJR, that at various points in time, you've seen other reports that would, you know, follow the trends with respect to children smoking, under the age of 17 and younger?
MR. LONG: Object to the form of the question.
THE WITNESS: I have seen reports that depict any number of age groups with respect to smoking incidents over my time at R.J. Reynolds, some of which were developed and designed -- developed and reported through R.J. Reynolds directly and some of which were obtained through outside sources, such as the Census Bureau; Health, Education, and Welfare Department; et cetera.
So I have seen all kinds of statistics

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describing the nature and character of the cigarette market from a smoking standpoint, yes.
BY MR. ARNOLD:
Q. And we go back to this exhibit, 15, and the future president of RJR is writing to the present president that there's been a gradual decline. That's referring to its share of 14- to 17-year-old smokers; isn't that correct?
MR. LONG: Objection. Lack of foundation, calls for speculation.
THE WITNESS: I don't know whether Mr. Long was referring to this specifically or in general, the decline in share of whatever he's referring to.
I don't remember what -- it doesn't -- it's not clear what brand, if it was any R.J. Reynolds brand, because in point of fact, R.J. Reynolds Tobacco cigarette brands were all declining against any segment of the market that was measured, that I'm aware of; and that whatever plans were in place were to improve Reynolds' position relative to market share, but very specifically and at the time I was director of media services, my knowledge was at adult smokers, 18 years and over. That's the only pure knowledge

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I have regarding market share declines with respect to R.J. Reynolds.
BY MR. ARNOLD:
Q. Well, when you look at Exhibit 15, the only ages that appear within the document are 14 to 17; is that correct?
A. You're asking me to interpret what the writer of this memo 18 years ago wrote. I can't do that. I honestly do not know what he's referring to.
MR. ARNOLD: Let me respectfully move to strike that as being non-responsive.

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BY MR. ARNOLD:
Q. Within Exhibit 15, the only ages referred to are 14 to 17; isn't that correct?
A. The only ages on this memo are 14 to 17.
Q. If I could direct your attention to Exhibit 12, sir -- and I'd like to show that on the Elmo -- this is dated September 30, 1974. It's an RJR document regarding a presentation to the Board of Directors.
Do you see that on the face sheet?
A. Yes, if "B of D" letters stand for that, Board of Directors.

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Q. And of what you've read of the document, that's consistent with what's on the first page of the document; isn't that correct?
A. It's only consistent -- no, it's not consistent with Board of Directors. It's -- what I've read of the document seems to be a statement of plans for Reynolds. I don't know who it's directed to.
Q. Okay. Let's assume for purposes of my question that this is a presentation to the RJR Tobacco Company Board of Directors.
A. I would accede to your assumption, yes.
MR. LATHAM: Object to foundation.
BY MR. ARNOLD:
Q. Does RJR -- do you see it says, "RJRI"?
A. Yes.
Q. Is that just RJR, Incorporated, or --
A. No. It would -- and I don't know what it was meant here -- but my experience when I was there, "RJRI" generally stood for R.J. Reynolds Industries, which was the parent company.
Q. All right. Well, let's assume then this is a presentation given to the parent

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company, Board of Directors.
A. Assume whatever you like. I have no idea.
Q. And if you look at the top of the document, it talks about "1975 Marketing Plans Presentation."
Do you see that?
A. Yes. I'm sorry.
Q. At Hilton Head. Evidently, that's where the presentation was made --
A. I guess so.
Q. -- September 30th, 1974.
Then there's an objective set out in the document. And it says, "Our paramount marketing objective in 1975 and ensuing years is to reestablish RJR's share of market growth in the domestic cigarette industry."
Do you see that?
A. Yes.
Q. And that was consistent as a matter of policy when you were with R.J. Reynolds; is that true?
A. Pretty much, yes.

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Q. And then it talks about, "Chart 2, Opportunity Areas." And it says, "We will speak

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to four key opportunity areas to accomplish this. They are: 1, increase our young adult franchise."

Do you see that?

A. Yes, I do.

Q. Was that --

MR. LONG: Counsel, could we just put on the record, so that the jury will know, that the highlighting, I assume, was placed by your office, plaintiff's counsel.

MR. ARNOLD: That is very true. Your detective work is first rate.

BY MR. ARNOLD:

Q. The policy of RJR when you were with the company was to increase it's young adult franchise; is that correct?

A. Policy was to increase market share of younger adult smokers 18 and over, yes.

MR. ARNOLD: I move to strike that as being non-responsive and ask you specifically.

BY MR. ARNOLD:

Q. When you were with RJR, was it the policy of the company to, quote, "increase our young adult franchise," close quote?

A. The policy and strategy was to increase our market share against younger adult

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smokers, defined as 18 years and older.

Q. Adult franchise smoker. What is a "franchise smoker"?

A. I don't really know what it's referring to here.

Q. Now, when you look at the document in the next paragraph, it says, "First, let's look at the growing importance of the young adult in the cigarette market."

Do you see that?

A. Yes, I do.

Q. Now, when you were with RJR, that was an important part of the cigarette market, too?

A. As I just said, as you stated that our -- one of our opportunity areas was to increase the share against younger adult smokers age 18 and over, yes, in those terms it would be.

Q. And you're very careful to qualify the young adult market as ages 18 years and over; is that correct?

A. Yes, I am.

Q. It would be immoral to market to young adults if they were 17 or younger?

A. It would be irresponsible, yes.

Q. Okay. And immoral?

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A. If you like, yes.

Q. Now, when you look at the document, again on the Elmo, you see -- you see it says, quote, "In 1960, this young adult market," comma, "the 14-24 age group," comma, represented 21 percent of the population," end of quote.

Do you see that?

A. Yes.

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Q. Now, isn't it true that you have seen documents for RJR that define the young adult market in a similar fashion, in other words, children under the age of 18?
MR. LONG: Object to the form of the question.
THE WITNESS: I have seen data presented, statistical data, that describes various age segments of the population, among which are 14 to 24, as indicated here, or whatever. I have seen those kinds of descriptors on charts reflecting statistical information, yes.
BY MR. ARNOLD:
Q. And those descriptors on charts reflecting statistical information means who's smoking?
A. It depends on what --

MR. LONG: Object to the form of the question.
THE WITNESS: It would depend on what the chart is intending to reflect.
BY MR. ARNOLD:
Q. Haven't you seen some charts that have, you know, 14-to-24-year-old age groups as showing who is smoking?
A. I've seen charts that show incidence of smoking on any number of age groups, yes.
Q. Including 17 and younger?
A. I can't be specific whether it was 17 and younger, or 14 to 18, or 14 to 15. It could be any combination of those things.
Q. Now, it says, "In 1960, this young adult market," comma, "the 14-24 age group," comma.
As a matter of grammatical English, wouldn't you agree that the young adult market means the 14-24 age group?
MR. LONG: I object to the question. Calls for speculation. He didn't write this document.
THE WITNESS: I don't know what it refers -- it literally refers to an age group, as described here. If there -- if in the context of the words

that appear in this sentence -- I can't speak for what it necessarily refers to in those terms -- certainly, 14- to 24-year-olds could be described as young people. Whether it's the young adult market or not, I don't know.
BY MR. ARNOLD:
Q. But it's not uncommon to the define young adult market as 14 to 24?
A. It is uncommon to me.
Q. Well, you have seen it, though, haven't you?
A. No, I have not, until this piece of paper.
Q. Well, let's go on and continue looking at the document.
You see the highlighting where it says, "They represent tomorrow's cigarette business. As this 14 to 24 age group matures, they will account for a key share of the total

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cigarette volume -- for at least for the next 25 years? Do you see that?

A. I see that.

Q. Now, that is an indication that the company is looking at children to be a part of its sales?

MR. LONG: Objection. Lack of foundation, calls for speculation.

THE WITNESS: I could not conclude that that is what it's saying, no.

BY MR. ARNOLD:

Q. All right. Now let's look at the next page of the document. And there it has -- under Chart 4, it talks about "Share By Age" of what, Philip Morris and -- is that Brown & Williamson? "B&W" is Brown & Williamson?

A. Oh, yes, Brown & Williamson.

Q. And there, it's talking about -- and I'll quote and direct your attention. It says that "in the 14-24 age category, Philip Morris has a 38 percent share and B&W a 21 percent share. Both companies have significantly lower shares in the remaining age categories," close quote.

RJR at this point in time is following the 14-to-24 age group with respect to those sales that Philip Morris has and Brown & Williamson, correct?

MR. LATHAM: Object.

MR. LONG: Objection. Lack of foundation, calls for speculation. You're asking him to interpret somebody's comments about a chart that -- I assume the chart's not in here; but anyway, it calls for total speculation.

THE WITNESS: I have no idea what they were following.

All I know is what it says. They're describing a set of circumstances based on data that they used from some source that they used. I don't know whether they're following it, per se, or if they're providing it as information.

BY MR. ARNOLD:

Q. Well, is it fair to say, from your perspective and experience in the tobacco industry, that looking at the document, that the data consists in part of 14-, 15-, 16-, and 17-year-old children smokers?

MR. LONG: Objection. Lack of foundation, calls for speculation.

THE WITNESS: It's fair to say that in my experience, I've seen all kinds of numbers that related to any number of age breaks.

However, it's not fair to imply that they have any meaning in terms of the business practice of those companies. It certainly didn't imply that or for a fact mean that when I was involved with R.J. Reynolds or Lorillard Tobacco Company.

MR. ARNOLD: I'm going to move to strike your answer as being non-responsive. And I'll try to form a better question for you.

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THE WITNESS: Okay.
BY MR. ARNOLD:
Q. Going back to the document, if we could with the Elmo, when we look up here at ages 14 to 24, from your experience in the tobacco industry, in the context of this paragraph, statistically 14-, 15-, 16-, and 17-year-old smokers are being followed; is that correct?
MR. LONG: Objection. Lack of foundation, calls for speculation.
THE WITNESS: I have seen such numbers on a highly infrequent and limited basis in my experience.
MR. ARNOLD: Okay. And I have to move to strike as being non-responsive.
And I'm going to ask the court reporter to read the question back to you.
(The record was read.)
THE WITNESS: And I will repeat my answer. On a highly infrequent and limited basis have I seen such numbers.

BY MR. ARNOLD:
Q. I'd like to look at the Elmo again, if we may. And you can see, under Chart 6, it says, "Share By Age, Winston and Salem." Now, that -- those cigarettes were RJR cigarettes?
A. Yes, they were.
Q. And Marlboro and Kool are the cigarettes of what, Philip Morris?
A. Marlboro is a Philip Morris cigarette product, and Kool is a Brown & Williamson cigarette product.
Q. And the document says, "Our two major brands, Winston and Salem" -- do you see that sentence --
A. Yes.
Q. -- "show comparative weakness against Marlboro and Kool among these younger smokers."
So what is being tracked here is the RJR Winston and Salem cigarettes with respect to younger smokers --
MR. LONG: Objection.
BY MR. ARNOLD:
Q. -- is that true?
MR. LONG: Inadequate foundation. Calls for speculation.

THE WITNESS: All I can tell from what this statement says is that they're describing a set of statistical information based on the parameters that are included in here. That's all I can tell you.
BY MR. ARNOLD:
Q. Now, your tenure with RJR involved following younger smokers with respect to your advertising content; isn't that correct?
MR. LONG: Object to the form of the question. Vague and ambiguous.
THE WITNESS: My tenure at R.J. Reynolds involved the advertising of cigarette products to adult smokers.
BY MR. ARNOLD:

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Q. Well, let's look at the document. You can see where they say, "Among these younger smokers, Winston is at 14 percent in the 14 to 24 age group versus Marlboro at 33 percent."

So the age group this document is looking at is, once again, the 14-to-24 age group and who's smoking RJR products in part; is that correct?

A. It is --

MR. LONG: Objection. Lack of foundation,

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calls for speculation.

THE WITNESS: It is describing the statistical information based on whatever source that's being used here -- and I have no idea what that is -- it's describing a set of statistical factors.

BY MR. ARNOLD:

Q. Well, don't you agree in general that the age groups of your smokers are in part a reflection of your company's advertisement?

MR. LONG: Object. Vague and ambiguous. When you say "your company," are you talking about Reynolds? Lorillard?

BY MR. ARNOLD:

Q. RJR, sir.

MR. LONG: Okay.

THE WITNESS: Well, it's not my com

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d calls for speculation.
25 THE WITNESS: Tobacco companies are not, to
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1 my knowledge, doing anything to undercut parental
2 authority or supervision or to induce children to

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smoke.
MR. ARNOLD: I'm going to move to strike as being non-responsive and ask the question be read back to the witness, please.
(The record was read.)
THE WITNESS: As I've answered --
MR. LONG: Same objection.
THE WITNESS: As I've answered, tobacco companies are not doing anything to undercut parental authority or supervision, because the advertising, as I understand it and believe, is not geared towards that end.
MR. ARNOLD: I'm going to move to strike that as being non-responsive and ask that the question be read again to the witness.
It's hypothetical.
(The record was read.)
MR. LONG: I'm going to add as a further objection, it seems to me you're asking for some expert opinion in the area of psychiatry or psychology, a further basis for the objection to the question.
THE WITNESS: I have the same answer I gave

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in the last two instances. I am not -- as Mr. Long points out, I'm not an expert in psychology. And I have no basis for other than the answer I provided to give you.
BY MR. ARNOLD:
Q. It would be wrong, wouldn't it?
A. It would be --
MR. LONG: What?
THE WITNESS: What would be wrong?
Thank you.
BY MR. ARNOLD:
Q. It would be wrong for tobacco advertising to try to create psychological pressures in children that would undercut parental authority with respect to cigarette smoking, wouldn't it?
A. If in fact the tobacco companies were doing that -- and I do not believe they are -- then it is not an issue.
MR. ARNOLD: Move to strike.
Could you read the question back?
(The record was read.)
THE WITNESS: Since I don't believe that tobacco companies are attempting to accomplish that, I cannot answer the question beyond that

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statement.
BY MR. ARNOLD:
Q. It's a hypothetical.
A. I can't deal with a hypothetical that has absolutely no grounding in reality.
Q. I'm going to ask the question again and have this (indicating) marked.
MR. LONG: Could we take just a break for a couple of minutes?
MR. ARNOLD: All right.
VIDEOTAPE OPERATOR: Off the record at 2:02.
(Brief recess.)
VIDEOTAPE OPERATOR: Back on the record at

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2:06.
BY MR. ARNOLD:
Q. Sir, if, hypothetically, and I'm asking you to assume this is true for purposes of my question: If tobacco advertising is intended to create psychological pressures in children that undercuts the parental authority with respect to issues of smoking, then that would be wrong, wouldn't it?
A. As I said, I don't believe that that is the case, that the advertising is intended to undercut parental authority. However, if in fact

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it in the remotest sense had that possible effect, yes, it would be wrong.
(Plaintiffs' Exhibit Orlowsky No. 27 was marked.)
BY MR. ARNOLD:
Q. I'd like to hand to you Exhibit 27 and ask that you read that.
And perhaps we can go off the record as you read the JAMA article.
VIDEOTAPE OPERATOR: Off the record at 2:06.
(Brief recess.)
VIDEOTAPE OPERATOR: Back on the record at 2:15.
BY MR. ARNOLD:
Q. Sir, if I may direct your attention again to the Elmo.
Let me start over. I have my mic on now.
I want to direct your attention to the Elmo and the Journal of the American Medical Association, dated May 23/30, 1990. And you've had a chance to read this article, have you not?
A. Yes.
Q. And that's Exhibit 27, in front of you?

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A. Yes.
Q. Do you believe the Journal of the American Medical Association is biased against the tobacco industry?
A. I don't know.
Q. Let me go and show you the next page from Exhibit 27. And there's an article. You can see the heading of "Who Profits From Tobacco Sales to Children?"
Do you see that?
A. Yes, I do.
Q. In the first sentence --
MR. LONG: Just before we get started, I want to make a general objection to the use of this article in JAMA in cross-examining this witness. There's absolutely no foundation for the admissability of this article on the record.
Obviously, we know that the Journal of the American Medical Association is a recognized peer review journal in the area of medicine. It has absolutely no such recognition in the area of advertising and marketing.
And the fact that a study which was co-authored by an MBA --

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MR. ARNOLD: And you should make a short
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objection, sir, because you may find --
MR. LONG: I will if you'll allow me to
continue.
MR. ARNOLD: -- yourself running afoul of the
rules. And I've been liberal today allowing
you --
MR. LONG: Well, then allow me to finish my
objection.
And the fact that the journal has
published an article in the area of advertising
and marketing does not speak at all to the
admissibility of this document.
And if I could just have that standing
objection on the JAMA article, I won't have to
continue that objection. Okay?
MR. ARNOLD: You certainly may, sir.
MR. LONG: Thank you.
BY MR. ARNOLD:
Q. If we can go back and show the
article, the first sentence states that "It is
estimated that more than 3,000,000 American
children under 18 years of age consume 947,000,000
packs of cigarettes and 26,000,000 containers of
smokeless tobacco yearly," end of quote.
If that figure of 3,000,000 American
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children is true, doesn't that give you grave
concern regarding what's happening to children
with respect to tobacco advertising?
MR. LONG: Objection. Calls for
speculation.
THE WITNESS: I think if one person under the
age of 18 smokes cigarettes, it gives me concern.
However, as I've said repeatedly in the past, I
cannot attribute the one person under the age of
18 to smoking to the fact that advertising is
directed to them to motivate them or direct them
to smoke..
BY MR. ARNOLD:
Q. Don't you think that if 3,000,000
American children are smoking, using tobacco
products, that there is a responsibility with the
tobacco industry to find out why and do all that
they reasonably necessary can to prevent that?
A. The tobacco industry has done a number
of things in the past to try to prevent young
people under the age of 18 from smoking.
There are limited numbers of options
available to the tobacco industry to control for
that, since this article points out that
enforcement of laws that are already on the books
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in virtually every state of the United States need
to be dealt with to prevent this from happening.
Q. Wouldn't the first step the tobacco
industry should take is to perform research on
their advertising to make sure that it does not
appeal to young children and induce them to smoke?
A. As I said earlier, if the tobacco
industry elected to do advertising, for whatever
reasons, among people under the age of 18, we

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would be accused of trying to find out how to advertise. We would be sitting here in this very room, and I would be answering your questions that would accuse us of having some ulterior motives.

So the tobacco industry has opted not to do any research under -- amongst persons under the age of 18.

Q. Now, you've mentioned ulterior motives. And I'd like to go on to the Elmo and read to you the sentence that starts, "These tobacco products account for annual sales of $1.26 billion. Approximately 3 percent of tobacco industry profits ($221 million in 1988) derived directly from the sale of cigarettes to children, an activity that is illegal in 43 states," end of quote.

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Wouldn't $221,000,000 in profit bias the industry?

MR. LONG: Objection. Lack of foundation, calls for speculation.

THE WITNESS: I'm sorry. I don't understand your question.

BY MR. ARNOLD:

Q. Well, wouldn't making $221,000,000 profit become a motive for the tobacco industry not to research the effects of its advertising on children?

A. I think your statement is ridiculous. And I'm not going to answer that question in that turn.

MR. ARNOLD: I've got to move to strike your non-responsiveness and ask that you be responsive, sir.

THE WITNESS: Well, then ask me the question.

MR. ARNOLD: Could you read it back, please?

(The record was read.)

THE WITNESS: I still think your question is ridiculous. And it has nothing to do -- the number, whether that number is even correct or any of those numbers in this article are correct.

But besides that fact, it is

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ridiculous to make that statement that we would not do research amongst persons under the age of 18 because of any dollar figure.

BY MR. ARNOLD:

Q. Well, the only research in the documents we have seen in the other exhibits with children have to do with concerns of increasing the market share among those children; isn't that correct?

A. You haven't seen any research that I'm aware of, in any of the previous documents that indicate any such thing, that any company was conducting any activity in any overt or otherwise manner towards directing marketing or advertising activities towards children.

Q. And if --

A. If that's your conclusion, I suggest you reread the documents.

Q. If they did, that would be wrong and immoral, wouldn't it?

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A. If they did, which I do not firmly believe they do, it would be totally and wholly irresponsible.
Q. Let me go on and show you further down, where it says, "According to a survey of

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high school seniors, the average age for the first use of cigarettes is 13 years."
Do you see that?
A. Yes, I do.
Q. Now, do you find that to be of concern to you as the president and chief operating officer of a tobacco company?
MR. LONG: Objection. Lack of foundation, calls for speculation.
THE WITNESS: This reference is cited on the reference sheet is "Johnston LD, O'Malley PM. Bachman JG. Use of Licit and Illicit Drugs by America's High School Students: '75 to '84. Rockville, Maryland: National Institute on Drug Abuse."
I don't know what that suggests relative to cigarettes, how valid it is or how relevant it is.
MR. ARNOLD: I'm going to move to strike that as being non-responsive and ask the question be read back to the witness.
(The record was read.)
THE WITNESS: I find the use of a product that's not intended for children, that children shouldn't be using, as a parent, as a citizen,

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among other things, to be of concern.
BY MR. ARNOLD:
Q. You would agree that parents shouldn't have to police the tobacco industry advertising?
A. I agree -- oh, I'm sorry.
MR. LONG: I object to the form of the question. Vague and ambiguous and calls for speculation.
THE WITNESS: I agree that parents should police the behavior of their children.
MR. ARNOLD: I have to move to strike that as being non-responsive and ask the question be read back to the witness.
(The record was read.)
MR. LONG: Same objection.
THE WITNESS: My answer remains, that I agree that parents should supervise their children in the behavior of their children.
MR. ARNOLD: Objection. Nonresponsive.
MR. LONG: I'm not sure that I understand the question.
(The record was read.)
THE WITNESS: Parents do not have to police tobacco advertising, since tobacco advertising, in my opinion, is not affecting the behavior of their

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children.
BY MR. ARNOLD:
Q. Now, you understand that the citation to the statement that the first use of cigarettes is 13 years among a survey of high school students

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comes from the National Institute on Drug Abuse?
A. Yes.
Q. Do you think that's a biased institution?
A. I have no idea what kind of institution it is.
Q. You would agree, would you not, that tobacco advertising never should undermine parental control on the issue of whether children should smoke or not smoke?
A. I think I've already answered the question in saying that I do not believe tobacco advertising does influence or interrupt or intervene in parental control. Therefore, to suggest that it does is not an issue in my mind. I don't think it does.
MR. ARNOLD: Well, that's not my question, so I'm going to move to strike that as being non-responsive and ask the question be read back to the witness.

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(The record was read.)
THE WITNESS: Are you asking me that question in hypothetical terms --
MR. ARNOLD: Yes.
THE WITNESS: -- as you did before?
MR. ARNOLD: Yes, sir.
THE WITNESS: Hypothetically, but prior to hypothetically, in fact, I do not believe that tobacco advertising undercuts or influences what children do or undercuts parental supervision and responsibility. Obviously, if it did, I would be concerned about it.
BY MR. ARNOLD:
Q. You haven't researched that either?
A. No, we have not.
Q. I'd like to go back to the JAMA article and show you -- the statements says, "If sales to children account for 3.3 percent of cigarette sales, these six companies share an annual $703,000,000 in revenues and $221,000,000 in profits from the sale of cigarettes to children."
Do you see that?
A. Yes, I do.
Q. And the companies they're referring

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to are Philip Morris, RJR Nabisco, Brown & Williamson, Lorillard, American Brands, and Liggett & Meyers; is that correct, sir?
A. Yes.
Q. And that is -- that would be a substantial sum of money, $221,000,000 in profits, wouldn't it?
MR. LONG: Objection. Lack of foundation, calls for speculation.
BY MR. ARNOLD:
Q. If it's true --
A. $220,000,000 is a lot of money.
Q. It goes on and it states that "Children who become addicted to nicotine frequently become lifelong customers of the tobacco companies."

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Do you see that?
A. I see the statement, yes.
Q. Now, if the majority of present smokers started as children, that means children, when they become addicted, provide a stream of income to tobacco companies, doesn't it?
MR. LONG: Objection. Lack of foundation, calls for speculation.
THE WITNESS: A, I don't agree that children

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are addicted to cigarettes; B, I don't feel that any -- the tobacco companies are doing anything to influence children to smoke in the first place. Consequently, I don't think that whatever monetary factor you want to associate with all of this is relevant to the issue.
BY MR. ARNOLD:
Q. Well, are you saying that the children who smoke don't become addicted?
A. I do not believe they're addicted, no.
Q. Do you believe people who smoke are addicted?
A. Based on my personal experience, no, I do not believe they are addicted.
Q. You're aware that the Surgeon General holds that cigarettes are addictive, are you not?
A. I am not a scientist. I just said, based on my personal experience as a layman, I do not believe they're addictive.
MR. ARNOLD: I move to strike that as not being responsive.
BY MR. ARNOLD:
Q. You're aware, are you not, that the Surgeon General finds that cigarette smoking can become addictive?

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A. Actually, I'm not technically aware of that, no.
Q. Okay. Are you aware the United States Public Health Service also holds that cigarette smoking can become addictive?
A. I'm not technically aware of that either.
Q. Are you aware that the American Cancer Society holds that cigarette smoking can be addictive?
A. Yes, I believe I've read that.
COURT REPORTER: Excuse me. You are talking at the same time. Could I get the question again? I'm sorry.
BY MR. ARNOLD:
Q. Are you aware that the American Cancer Society --
A. Yes, I believe I've --
Q. -- takes the position that cigarette smoking can be addictive?
A. Yes, I believe I've read that.
Q. Are you aware that the World Health Association takes the position that cigarette smoking is addictive?
A. No, I'm not aware of that.

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Q. Are you aware that the American

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Medical Association takes the position that cigarette smoking is addictive?
A. I'm not sure I'm technically aware of that either.
Q. Why not?
A. I'm just -- I'm not aware of it.
Q. In other words, why is it "technically not aware" as opposed to just not being aware?
A. Technically aware of whether I actually have a memory of reading or hearing about it? I'm not, to that extent, aware of it.
Q. It's your understanding, isn't it, that the American Society of Addiction Medicine has taken the position that cigarette smoking is addictive?
A. I, unfortunately, have never heard of the American Society of Addiction and Medicine.
Q. You've heard of the National Institute on Drug Abuse, though, haven't you?
A. Yes, I have.
Q. And you're aware that they take a position that cigarette smoking is addictive?
A. I'm not aware of their official position, no.

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Q. As the president and chief operating officer of Lorillard Tobacco Company, in order to do your job properly, shouldn't you know whether the Surgeon General holds that cigarette smoking is addictive?
MR. LONG: Objection to the question as being argumentative.
THE WITNESS: Not necessarily.
I am aware that the addiction issue is a highly controversial one. And I am aware that many organizations out there -- and I, unfortunately, can't keep track of every single organization that may take an official position with respect to whether or not cigarettes are addictive. But there are many that do.
So, yes, I am generally aware that there are organizations and individuals who hold that belief or position.
BY MR. ARNOLD:
Q. You know the Surgeon General is the chief medical officer of the United States of America? You understand that?
A. I thought the Surgeon General was the chief public health officer of America.
Q. So you do understand that he holds a

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very high, respected position with respect to public health in the United States of America?
A. I know he's -- he or she is appointed to that position, yes.
Q. And the Surgeon General many times has come out and taken the position that cigarette smoking is addictive; isn't that true?
MR. LONG: Object to the form of the question. It lacks foundation, calls for speculation.
THE WITNESS: I do not know for a fact how frequently the Surgeon General has articulated a

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view that cigarette smoking is addictive. In fact, I'm not even quite sure whether the current -- whether I've heard the current Surgeon General say that.

BY MR. ARNOLD:

Q. If cigarette smoking is addictive hypothetically, then that would erode a person's free unfettered choice to stop smoking, wouldn't it?

A. What does "addictive" mean?

Q. That you have physiological effects, withdrawal symptoms, if you stop.

A. That's not my definition of

0182

"addiction."

Q. Well, using my definition.

A. And what is the question?

Q. Well, let's read the question back again for you.

(The record was read.)

BY MR. ARNOLD:

Q. I'll ask it again: If cigarette smoking is addictive, as the Surgeon General has indicated, you have physiological withdrawal symptoms when you stop, that would impair a person's unfettered free choice to stop smoking, wouldn't it?

MR. LONG: Objection. The question is vague and ambiguous, compound, and calls for speculation.

THE WITNESS: I am clearly not a scientist. I am not a physician. And I have no technical knowledge of this. But based on the statement you're making, I wouldn't necessarily believe, given the words that you're using, that someone would have no control, given the definition you are applying, over their behavior.

BY MR. ARNOLD:

Q. Isn't nicotine a potent drug?

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MR. LONG: Objection. Vague and ambiguous.

THE WITNESS: I have no idea whether nicotine

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A. Let me try one more time. I think that -- here we go, I think I'm getting it now. It's stuck together. It's -- all right. I got

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Source: https://www.industrydocuments.ucsf.edu/docs/qyhd0001

it.
Q. Sir, looking at the heading "Smoking & Health" in the document --
A. Right.
Q. And can we put that on the Elmo?
It -- you see it says, "Although based on previously issued research data, the report attempts to summarize more forcefully a statistical correlation between smoking and heart

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disease, stating that smokers experience a 70 percent greater death rate from such diseases than non-smokers."
Do you see that?
A. Yes, I do.
Q. And that was a document that went to you in 1983?
A. Yes, it was.
(Plaintiffs' Exhibit Orlowsky No. 20 was marked.)
BY MR. ARNOLD:
Q. I'd like to direct your attention to what we've marked, sir, as Exhibit 20.
Before we get there, 70 percent increased death rate is very significant, isn't it?
A. 70 percent is a significant number, yes.
Q. That's something that you, when you were working for RJR at that time as a senior vice president --
A. In 1983, I guess so, yes.
Q. December of '83?
A. Yes.
Q. -- is something that you should have

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wanted to know in order to do your job properly?
MR. LONG: Object. Vague and ambiguous, calls for speculation.
THE WITNESS: In what sense would it help me do my job properly? I'm not sure I understand that.
BY MR. ARNOLD:
Q. Well, wouldn't you want to know whether your product was injurious to the health of the American public?
A. I believe there was enough information -- whether I remembered this specific statistic or not, whether this is a significant or more significant than any other statistic, I was generally aware, specifically aware, of the controversial nature of the product and the fact that whatever we did and could control in dealing with what we did, to do it in the most responsible way possible, which is what I believe I, in fact, did during that period of time and since.
Q. So in 1983, you did know that there was a significant increase in the death rate from heart disease from smokers as opposed to non-smokers?
A. I did not say that. I do not remember

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that statistic, and I cannot say that today.

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Q. All right. Let's look at Exhibit, if we could, sir, 20.
And you see this is a "Product Research Report" for RJR, dated October 30, 1975?
A. Yes.
Q. And it's to a Mr. T -- is it Ogburn, Jr.?
A. Yes.
Q. Do you know who Mr. Ogburn was?
A. Yes.
Q. Who was he?
A. He was a member of the -- in those days, the marketing research department.
Q. Now, the marketing research department, would that have been a division underneath you or a department underneath you when you were the executive vice president?
A. It was in 1984 or whenever that happened, yes.
Q. Now, you can see the document is entitled "Share of Smokers by Age Group"?
A. Yes.
Q. And if you go down and look at the second paragraph, you see where the document

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indicates that Marlboro King showed a five-share point loss in the 14- to 17-year-old age group since 1973?
Do you see that?
A. Yes, I do.
Q. And that's an indication of marketing, you know, following the smoking trends in children, isn't it?
MR. LONG: I object to the question. It's totally without foundation and calls for speculation.
Further, I just want to state for the record now, that we've been going to about five hours. The overwhelming majority of the exhibits that you've shown the witness are documents unrelated to his time at Reynolds, are documents from JAMA, or things of that nature. I think he's had two documents or maybe three that he was copied on that were generated during the course of his employment.
The point of my comment is that if you have documents specifically authorized by Mr. Orlowsky or relating to periods of time when he was at Lorillard or Reynolds, we should get to those before we run out of time.

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BY MR. ARNOLD:
Q. Now, looking at the entry, it says, "Winston King" -- which again, that was an RJR product --
A. Yes, it was.
Q. -- "did not capitalize on Marlboro's decline, but exhibited some softness itself -- especially in the younger age groups (14-17 and 21-24)."
Do you see that?
A. Yes, I do.
Q. Now, when you were in charge of the

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marketing department, you were also concerned with the share of smokers by age group, weren't you?
A. I was in general, yes.
Q. And, in fact, you were concerned about whether your market was increasing or decreasing in the 17 and under age group?
A. Absolutely not.
Q. Let's look at the next paragraph. It says, "Salem King" -- and who's the manufacturer of Salem King?
A. R.J. Reynolds.
Q. "Salem King shows encouraging growth by posting a four share point gain in the 14-17

0220

market," end of quote.
Now, from your vantage point and experience in the tobacco industry, what does a four share point gain mean?
A. 4 percentage points.
Q. So at this time, RJR is tracking the increase in sales of its products to children; isn't it?
MR. LONG: Objection. Without foundation and calls for speculation on the part of this witness.
THE WITNESS: It is not tracking share of children. It is tracking what the subject -- and I can't speak to this specifically, since I was not a member of the R.J. Reynolds Tobacco organization in October 30th, 1975. However, by -- on the face value of this memo, share of smokers by age group.
And as other memos you've shown me from Reynolds, both before and after my time there, that indicate what they're doing is commenting on the nature of smoking incidents among various age groups.
And in this case, they're specifically identifying this group here. It does not imply, necessarily, anything other than that.

0221

BY MR. ARNOLD:
Q. "This group here" --
A. Yes.
Q. "This group here" means 14- to 17-year-olds?
A. Yes. And on the back-up sheets, it has 14 to 17, 18 and over, 18 to 20, 21 to 24, 25 to 34, 35 to 49, and 50 and over. And it characterizes all these very same brands on the broad spectrum of all of those ages.
Q. And all those ages are looked at in terms of being customers?
A. Not particularly, no. I mean, it is just reporting a statistical occurrence in the marketplace, which is what it measures.
Q. Well, what if we go back and look at the document. You can see here that it says, "MRD." That was the market research department you explained?
A. Yes, that's correct.
Q. And that market research department was under your control when you were the executive vice president?

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A. No. Actually, it was called market development -- market something. It wasn't called

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market research.

Q. Had a name change?

A. Yes.

Q. But it was the same function?

A. Similar, yes.

Q. Okay. Now, when you were executive vice president and the head advertising man for RJR, did you go back and look through the documents to see if the company in fact was following the market share of children?

A. I don't know if I specifically did that. But I don't remember seeing this kind of data. In fact, I never had an interest in seeing this kind of data at the points in time that I assumed various different responsibilities. I don't know whether the data was reported as such after 1983 or '2 or '4. From my standpoint, the data was just data, and it was of no value to what we were doing as a business enterprise.

Q. Well, from your answer, do I understand that you may have seen data showing tracking of 14- to 17-year olds, for example, by market share?

A. You showed me an exhibit earlier -- I think it was '80 or '82 or somewhere, where that

0223

information was provided. I was at Reynolds at that point in time.

Q. Okay. I'd like to show you what we're going to mark as Exhibit 19.

(Plaintiffs' Exhibit Orlowsky No. 19 was marked.)

BY MR. ARNOLD:

Q. And Exhibit 19 came from RJR. Are you familiar with the William Esty Company?

A. Yes, I am.

Q. And what is the William Esty Company, sir?

A. The William Esty Company was an advertising agency.

Q. And were they a consultant to RJR at any point in time?

A. I don't know if I would consider them a consultant. They were an -- one of R.J. Reynolds' tobacco agents -- one of R.J. Reynolds Tobacco Company's advertising agencies. If you consider that a -- being a consultant, then it might be.

Q. Now, do you see the title of this particular document says, "The Youth Research Institute Study Regarding Cigarette Smoking Among

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7,521 High School And College Students."

Do you see that?

A. Yes, I do.

Q. I'd like to show you the next page.

A. Do you mind if I look at all the pages for a second?

Q. Certainly.

A. Okay.

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Q. And do you see under Table 1, it says, "Incidence of Cigarette Smoking." And they have a column that says, "Smoke." And you see that they're tracking the percentage of smokers and freshmen in sophomore classes?
MR. LONG: Objection. Lacks foundation and calls for speculation.
THE WITNESS: That's what the chart reflects, yes.
BY MR. ARNOLD:
Q. What the chart is reflecting is that freshmen and sophomore high school students are under examination at this point in time; is that correct?
A. It would appear so from the way the chart is structured.
Q. Now, hasn't it been a long-term policy

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of RJR to track high school students' smoking up to and including your tenure as executive vice president?
A. I have no idea whether it was a long-term policy. It was not a policy as such. That information was reported. I don't know what this -- this research was done in December of 1959 by someone called the Youth Research Institute.
I don't know whether the William Esty Company on -- initiated this research on their own or bought the research or used the research from this other outfit and provided it to somebody. I don't know who it went to. There's no indication here.
R.J. Reynolds, in my experience, did have information available that described the incidence of smoking across a broad spectrum of the population for the purposes of information only, as I knew it, and for no other reason.
Q. And high school freshmen and sophomores would be ninth and tenth graders?
A. I guess so, yes.
Q. And they would be 15-, 16-, 17-year-old kids?
A. I suppose, yes.

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Q. Hasn't there been overwhelming evidence that cigarette smoking causes disease?
A. I think there is a great deal of statistical data that has resulted in considering cigarettes a risk factor. I do not believe that that data necessarily proves one way or the other that cigarette smoking cause diseases.
Q. From a public health context, you would agree, though, it would be proper to draw the conclusion that cigarette smoking causes lung cancer?
MR. LONG: Objection. Vague and ambiguous.
THE WITNESS: I think from a public health standpoint, it would be proper for people to be informed of the risk factors associated with any kind of behavior, cigarette smoking as one of those, and be certainly aware of that.
MR. ARNOLD: I move to strike that as nonresponsive and ask that the question be read

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back.
(The record was read.)
THE WITNESS: From a public health perspective, I believe it would be important for people to be aware that cigarette smoking is a risk factor and should be taken into account

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relative to that issue.
MR. ARNOLD: I move to strike that as being nonresponsive and ask the question be read back.
THE WITNESS: Well, I'm not sure I understand the question, I'm afraid.
MR. ARNOLD: Okay. Well, that's --
THE WITNESS: You'll have to be more specific.
MR. ARNOLD: Read it back, and I might change it.
(The record was read.)
THE WITNESS: I don't understand your point of the question.
BY MR. ARNOLD:
Q. Well, if you are undertaking a responsibility to public health, wouldn't you agree that the evidence is sufficient to draw a conclusion that cigarette smoking is a cause of lung cancer?
A. I think, again, from that perspective, given the evidence, the statistical evidence that clearly have been -- has been accumulated over time, that it would be in the interest of the public health to certainly conclude that it is a risk factor.

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I can't -- I'm not sure I'm able to make the distinction that you're drawing there.
MR. ARNOLD: Well, let me move to strike that as being nonresponsive.
BY MR. ARNOLD:
Q. And your answer refers to risk factor, and I'm talking about cause.
And let me ask you whether, from a public health standpoint, whether the evidence is sufficient to conclude that smoking is a cause of lung cancer?
MR. LONG: I object to the question as being vague and ambiguous.
THE WITNESS: I am not an expert in the public health, so I cannot really answer it.
From a personal standpoint relative to the public health, I don't know for a fact whether or not cigarette smoking causes disease.
As I said, it is a risk factor. And from a pure public health standpoint, that's an established point of view.
BY MR. ARNOLD:
Q. Do you agree with the statement that cigarette smoking may be hazardous to your health?
A. I believe that cigarette smoking may

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or may not be hazardous to your health.
Q. Do you agree with the statement that cigarette smoking is dangerous to your health?
A. I agree that cigarette smoking may or

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may not be dangerous to your health.
Q. Well, when you say "may or may not be," are you saying that it's equally likely on balance to be healthful?
A. Not at all. I'm saying it may or may not be dangerous to your health. It is a risk factor. And that has to be considered relative to the possible risks to your health.
Q. Do you agree that smoking causes lung cancer?
A. I believe it may or may not. I don't know whether it in fact causes lung cancer. Again, please keep in mind I am not a scientist.
Q. Do you believe, from your vantage point as president and chief operating officer of Lorillard, that smoking causes heart disease?
A. I don't know in fact whether it does or it doesn't. I do believe it is a risk factor for heart disease, among other diseases.
Q. From a public health standpoint, do you agree that smoking causes heart disease?

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A. Again, I have to --
MR. LONG: Object as vague and ambiguous.
THE WITNESS: The answer is the same: From a public health standpoint, it is a risk factor for cardiovascular disease and other diseases. I don't know whether or not it is a cause of disease.
BY MR. ARNOLD:
Q. What degree of risk factor?
A. I have no idea what degree of risk factor.
Q. Do you know whether it's significant or insignificant?
A. I'm not a statistician. I cannot characterize it in those terms.
All I can say is it is a factor that one must take into consideration as a potential risk.
Q. As president and chief operating officer of Lorillard, you do not know whether smoking is a significant risk factor in the cause of lung cancer?
A. As the president and chief operating officer of Lorillard, I know that smoking is a risk factor for certain diseases.

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Q. But you're unable to tell whether it's significant or insignificant as a risk factor; is that correct?
A. Since I'm not a statistician and I don't have that sort of knowledge, I cannot apply a quantifier to that.
Q. If it was a serious risk factor, would you change the way you do your job?
A. It depends on what was determined to be a serious risk factor that is different than what I understand the risk factor to be today in that context.
Q. If you had an increased rate of 14 to 20 times of lung cancer in smokers compared to non-smokers?

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MR. LONG: Is that a question?
THE WITNESS: I don't know what the question is.
BY MR. ARNOLD:
Q. Well, would you do your job differently?
MR. LONG: I object. Vague and ambiguous.
THE WITNESS: If it was something specific that I could identify in the course of my doing my job that could be attributable to that, then I

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certainly would address it.
But in vague and open-ended terms, to quote the number and say would I do something different, I don't know what I could do different to deal with that.
I certainly am trying to do my job as responsibly as I can given what I do know.
BY MR. ARNOLD:
Q. Do you know of anyone who has died from smoking-related cancer?
A. No, I do not.
Q. Do you know of anyone, acquaintances or people you come into contact with, who's died from smoking-caused coronary heart disease?
A. As I said to you, I don't know whether or not smoking causes heart disease, or lung cancer for that matter, so I don't know whether or not their death was attributable to smoking related to anything.
Q. Do you know whether you have had contact with people who have died from smoking-caused lung cancer, in the opinion of their physician?
MR. LONG: Object to the form as vague and compound.

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THE WITNESS: I don't know anyone personally who's died from lung cancer, attributable to whatever.
BY MR. ARNOLD:
Q. Coronary artery disease, have you known anybody to die from coronary artery disease --
A. I know some people who died from coronary artery disease.
Q. -- whose physician has indicated that smoking was one of the contributing causes?
A. No, I do not.
Q. So you, by personal experience, are unaware of any death from lung cancer, coronary artery disease, or emphysema as a result of smoking, which was diagnosed by a physician?
A. I am unaware of anyone like that.
Q. You are aware that the super majority of physicians in the United States of America take a position that smoking is a cause of lung cancer?
A. I know a large number of physicians take that position. I don't know whether it's a majority or super majority or what. But certainly there is a general view that it is a cause of disease.

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Q. Isn't it an overwhelming view, from what you understand, that physicians in this country take the position that smoking is a cause of lung cancer?
MR. LONG: I object to the form of the question as vague but still argumentative.
THE WITNESS: I'm not sure I understand. When you say "overwhelming," what does that mean?
BY MR. ARNOLD:
Q. A whole lot, sir.
A. A lot of physicians? I just said I believe a large and significant number of physicians would take the position that cigarettes are a cause of certain diseases.
Q. More than a majority?
A. I'm not going to quibble over whether it's more than a majority or less than a majority. I don't know.
Q. Okay. Well, shouldn't it be important for you to know, if you're the chief operating officer and president of a tobacco company --
A. It's --
Q. -- to know what the public health community --
A. It's extremely important that I know;

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and I do. Whether or not it's 51 percent or 49.9 percent I think is immaterial to the issue.
The fact is I am aware, as president and chief operating officer of Lorillard Tobacco Company, that a significant number of physicians in this country believe that cigarette smoking is a -- causes certain diseases.
And as such, I am sensitized to that point. And as such, I continue to say that we attempt to operate in a business context in the most responsible way, dealing with factors that we can influence relative to the responsible marketing and sale of our product.
MR. ARNOLD: I'm going to move to strike that as being nonresponsive.
BY MR. ARNOLD:
Q. If 90 percent of physicians in the United States of America believe that cigarette smoking is a cause of cancer, that is a significant statistic, more so than 49 percent, isn't it?
A. 90 percent is clearly a greater number than 49 percent.
Q. If 90 percent of physicians in the United States of America believe that smoking is a

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cause of lung cancer, you disagree with that position?
A. I didn't say I disagreed. I said I don't know, from my perspective, whether it does or does not cause lung cancer.
Q. As a seller of the product that 90 percent of physicians in the United States of America believe is a cause of lung cancer, that hypothetical is true, as a seller of a product, shouldn't you take all the effort necessary to find out?

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MR. LONG: Object to the form of the question. It's compound.
THE WITNESS: Well, if 90 percent of the physicians hypothetically concluded that cigarettes cause lung cancer; and under that hypothesis, if I was operating in that hypothetical mode, then I would certainly ask those physicians, what specifically in the cigarette product, as one of many questions, might be causing the problem.

To my knowledge, no physician and no scientist can specifically demonstrate the mechanism that causes the disease that they're attributing the problem to.

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So I don't know how I can react to the statement of whether it's 49 percent or 90 percent.

Under a hypothetical example, if they were able to indicate what specifically and clearly and concretely is the causative factor in the product, then I would certainly do my best, as president and chief operating officer, to deal with that issue and try to change it to the degree that I possibly could.

Q. And if they couldn't identify the very specific pathophysiology of cancer caused by an ingredient in your product, then you would disregard the physicians' belief that cigarette smoking is a cause of cancer?

MR. LONG: Object to the question as vague and argumentative.

THE WITNESS: Well, hypothetically and in fact we have at times, when certain hypotheses were advanced by the scientific community, whether it's this 90 percent body of physicians or other types of scientists, when they have hypothesized certain factors that they thought were attributable to causation of disease, we did the best we could to examine those issues and try to

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gain as much knowledge as possible regarding those issues to see if we could replicate that hypothesis.

To date, we have been, unfortunately, unsuccessful in being able to do that. And this is a real-world example.

So from a hypothetical, if somebody indicated something very specific, we would do whatever we could possible to try to investigate that and respond to it in the most appropriate way we could.

BY MR. ARNOLD:

Q. Does Lorillard do biological carcinogenic assays?

A. I'm not sure, frankly, whether they actually do that type of assay. They do bioassay-type work.

Q. Are you saying that Lorillard has undertaken scientific research within the company on a biological level to determine whether cigarette smoking causes cancer?

A. I honestly cannot answer that. I

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don't know factually. I don't get that directly involved in terms of that type of research that they're doing.

Q. You're the president and chief operating officer of Lorillard, and you don't know whether your company has done any research on whether cigarette smoking causes cancer?
A. I didn't say that.
MR. LONG: Objection. Argumentative.
THE WITNESS: I didn't say we didn't do them. We have done research regarding certain aspects of the product to determine various dimensions of whether or not there's a problem with some of the product or in the whole.
I just don't know the specific studies that have been done or the specific types of or the methodology of research.
The research and development does not report to me. That doesn't mean that I don't have knowledge of what they do.
But from a more specific standpoint, it reports to the chairman and CEO, who is a scientist, who is a much more informed individual in dealing with these kinds of questions. Unfortunately, I don't have that kind of technical knowledge.
BY MR. ARNOLD:
Q. How long has Lorillard been doing research on a biological level to determine whether cigarette smoking causes cancer?
A. I didn't say they were. I don't know for sure.
Q. Have they done any epidemiological studies?
A. I don't --
Q. When I say "they," I mean Lorillard.
A. Lorillard? I don't know for a fact.
Q. Do you have any statisticians employed by the company?
A. We have a statistician, but that individual does not get involved in that kind of statistical research.
Q. Do you have medical doctors involved in this research?
A. Not directly, that I'm aware of, no.
Q. For over 30 years, RJR has known that cigarette smoking is a health hazard; isn't that true?
MR. LATHAM: Object to the form of the question.
MR. LONG: I join in the objection.
THE WITNESS: I have no idea what RJR has known over 30 years --

BY MR. ARNOLD:
Q. Well, you knew --
A. -- relative to that subject.
Q. You knew in 1984 that smoking was a health hazard, didn't you?
A. I don't know that. Based on what?
Q. You knew that the evidence was

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overwhelming that cigarette smoke was a health hazard in 19 --

A. Based on the statistic in this marketing and intelligence report? Is that what you're referring to?

Q. In the 1980s, when you were with RJR.

A. I suppose -- I don't know what one would conclude, other than the fact that it was reported as such as --

(Plaintiffs' Exhibit Orlowsky No. 4 was marked.)

BY MR. ARNOLD:

Q. Let me hand you what I've marked as Exhibit 4 to the deposition. This is an RJR document, if we could have it on the Elmo.

And you can see that its author is Alan Rodgman. And the division was the Chemical Research. And the date was 1962 at the top of the

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page, sir.

Do you see that?

A. Yes.

Q. Do you know who Alan Rodgman was?

A. I know he was a member of the research group, yes.

Q. And that he has authored this paper, which is "The Smoking and Health Problem -- A Critical and Objective Appraisal."

Do you see that?

A. Yes.

Q. And you see where I've highlighted the statement, "An attempt has been made to present the arguments and conclusions as objectively as possible"? Do you see that?

MR. LONG: Where is that?

THE WITNESS: Third line down.

MR. LONG: Would you repeat that? I don't see that highlighted on the copy I have.

MR. ARNOLD: It's the --

MR. LONG: Okay. Well, I mean I was looking for the highlight. And I thought --

MR. ARNOLD: I apologize.

MR. LONG: Okay. Accepted.

MR. ARNOLD: Can we move on?

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MR. LONG: Sure.

(Interruption.)

MR. ARNOLD: Let's go off the record.

VIDEOTAPE OPERATOR: Off the record at 4:02.

(Discussion off the record.)

MR. ARNOLD: What was my last question to the witness, please?

(The record was read.)

THE WITNESS: It's not highlighted, but I see it in the first paragraph.

BY MR. ARNOLD:

Q. All right. Now, this basically is a report from one of RJR's scientists; is that true?

A. It appears to be.

Q. I'd like you to quickly go to page 7. There's a tab on it at the top. I show the Elmo.

And it says there, where I've highlighted, "The Evidence to Date: Obviously the

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amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such indictment is scant."

Do you see that?

A. I see that statement in here, yes.

Q. Okay. Now, when you were basically head of RJR advertising, isn't that the type of

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information that you should want to have?

A. First of all, this document was written in 1962. I joined R.J. Reynolds in 1977. So I don't know.

Secondly, I haven't read the document, obviously, at all. But just in glancing at it, by extracting the one sentence, "An attempt has been made to present the arguments and conclusions as objective as possible," I don't know if it fairly depicts what the -- and this is not necessarily a report.

It is a -- if I go back to the first sentence, it is a critical and objective appraisal of the cigarette smoke health problem, it's discussed in detail, and is related to the potential involvement of the members of the company's research department.

"Arguments and conclusions by those claiming cigarette smoke as a health hazard are presented, as well as counter-arguments and conclusions by those not in accord with such views. The weight of the arguments and counter-arguments is discussed in some detail."

So I don't know whether the sentence you highlighted on page 7 is necessarily any kind

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of conclusion or it is one part of a very complex document written by Dr. Rodgman in support of research projects that would engage members of the company's research department.

So what the validity of this document is is questionable.

Consequently, I really can't answer your question as to whether or not, in 1977, November at the earliest of 1977, whether or not this was relevant, important, valuable, or even company information that I would have even had the remotest access to. I just can't answer that.

Q. Would you like to take time to read the article?

A. If you like.

Q. There is some question you have as to whether the article says what I have read to you from the highlighted portion.

A. I am only saying that you're taking this out of the context of the totality of what this document represents. And what you're reading may be selectively reaching some conclusion that may or may not be accurate.

Q. Please read the document.

A. Okay.

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VIDEOTAPE OPERATOR: Would you like to go off the record?

MR. ARNOLD: Yes.

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VIDEOTAPE OPERATOR: Off the record at 4:07.
(Brief recess.)
BY MR. ARNOLD:
Q. You've had a chance to read Exhibit 4?
A. Yes, I have.
Q. And that's a document that has been authored by Alan Rodgman of the Chemical Research Division?
A. It's by Alan Rodgman. I don't know what -- I guess so. Yes, it says Chemical Research Division.
Q. And Mr. Rodgman himself had about 34 footnotes in the work that he's done --
A. Yes.
Q. -- to support this document?
A. Yes.
Q. Is that correct?
A. That is correct.
Q. And when I come back and I show you on page 7 -- and it says, quote, "Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The
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evidence challenging such an indictment is scant."
Do you see that?
A. Yes, it says that.
Q. And that's information that, when you were head of the advertising department for RJR, you would wanted to have had in order to do your job properly, wouldn't you?
A. Well, I don't think that's the complete information related to this document. Therefore, I would not be responding or reacting to the appropriate incite provided by this document. That does not sum up why it should or should not be important to me.
Q. Well, I'm asking you, sir, specifically, when we look at his statement that the evidence is overwhelming that cigarette smoking is hazardous, that that statement should be important for you to have known when you were head of the advertising department for RJR?
A. That statement would have been important for me to know in the context in which it was made. And I believe it was important for me to know in the context in which it was made. And I did know that in the context in which it was
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made in this document, not on the isolated basis of your comment.
Q. Now, isn't it also true that you were aware, when you worked for RJR, that cigarette smoke contained carcinogens?
A. No, I was not aware initially about carcinogens, nor was I aware subsequently to when I worked that it contained carcinogens.
Q. You're saying that when you were vice president for RJR, that you were unaware that tobacco smoke contained carcinogens?
MR. LONG: Object to the question on the basis that it's vague and ambiguous.
THE WITNESS: I was not aware that cigarette

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smoke, or tobacco smoke as you're defining it, contains carcinogens.
BY MR. ARNOLD:
Q. Now, as the president and chief operating officer for Lorillard, you do know that tobacco smoke contains carcinogens?
MR. LONG: Objection. Vague and ambiguous.
THE WITNESS: No, I do not know that.
BY MR. ARNOLD:
Q. And you understand that a carcinogen is a substance that has the capacity for causing

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cancer?
A. That would be, I guess, a definition of "carcinogen," yes.
Q. Okay. Have you, in your employment with tobacco companies, ever reviewed documents indicating that cigarette smoking contains carcinogens?
A. I cannot recall reviewing a document to that effect, no.
Q. If tobacco company researchers found that cigarette smoke contained carcinogens, would that be surprising to you?
A. It would be of interest to me, yes.
Q. And it would be of interest because it has a public health effect, doesn't it?
A. I don't know whether it would have a public health effect. And from a technical standpoint, again, I have to give a layman's response to this question, since I don't have that scientific sort of frame of reference.
If tobacco smoke contained a carcinogen that had some effect in terms of causing a problem or an illness, then I certainly would be concerned about that and would want to investigate that to determine whether or not that

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was an issue for us.
Q. Are you familiar with any memoranda, reports authored by Alan Rodgman that state to the effect that there's a distinct possibility that cigarette smoke substances have a carcinogenic effect on the human respiratory system?
MR. LONG: Object to the question as without foundation and calling for speculation.
THE WITNESS: I have no memory or knowledge of that type of information, no.
(Plaintiffs' Exhibit Orlowsky 29 was marked.)
BY MR. ARNOLD:
Q. All right. I want to mark an exhibit. I'll call this 29 (indicating). And I only have one copy. I apologize for that.
Let me hand that to you, sir, what we've marked as Exhibit 29 and ask if you would have -- take the opportunity to read that.
MR. ARNOLD: Perhaps we should go off the record.
VIDEOTAPE OPERATOR: Off the record at 4:22.
(Brief recess.)
BY MR. ARNOLD:
Q. That's Exhibit 29, sir?

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VIDEOTAPE OPERATOR: We're back on at 4:25.
BY MR. ARNOLD:
Q. Exhibit 29 is a document that was authored by Dr. Alan Rodgman, 1959, and sent to Mr. Kenneth H. Hoover?
A. Yes.
Q. Who is Mr. Hoover?
A. I have no idea.
Q. Could we show the Elmo.
And do you see it starts off, and it says, first paragraph, quote, "In 1954 the first report of the presence of a carcinogenic, (cancer-producing) polycyclic hydrocarbon 3,4-benzpyrene in cigarette smoke was published," end quote.
Do you see that?
A. Yes, I do.
Q. Now, that's some 25 years or more before you started with RJR Reynolds, RJR Tobacco Company?
A. Right.
Q. And you were unaware that there were carcinogens in smoke?
A. I don't know if this says that there are carcinogens in smoke.

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Q. If you go down and look at the second paragraph, and it says, "Eight of the polycyclic hydrocarbons isolated from the smoke are known to produce cancer in mice. Another five or six are suspect as cancer-producing agents in lab animals."
Do you see that?
A. Yes, I do.
Q. Then it goes to the next paragraph, and it says, "Nonetheless, there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system" --
A. I think the prior statement --
Q. -- "Medical" --
A. You're reading it nicely.
The prior statement says there's no evidence that any of these compounds will produce cancer in man; nonetheless, there's a possibility. He's hypothesizing. I'm sure you're familiar with that concept.
MR. ARNOLD: I'm sorry. Let me move to strike that, respectfully. I didn't get through my entire question.
THE WITNESS: I just want to be clear on what

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we're saying here.
BY MR. ARNOLD:
Q. Let me form my question better --
A. Be my guest.
Q. -- response.
Going back to the document, you see it says, "Nonetheless, there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system. Medical experience has shown that man

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responds to various chemical substances in the same manner as experimental animals. It follows therefore that it would be better for the consumer if cigarette smoke were devoid of such compounds," end of quote.

Now, did I read that correctly?

A. For what you read, yes.

Q. Okay. Now, if I understand the point you're trying to make, you're saying that if it causes cancer in animals, that that's not relevant to whether it will cause cancer in man?

A. No. I'm saying it's not necessarily conclusive evidence that it may or may not cause cancer in man. And I think that's what Dr. Rodgman was suggesting when he said

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nonetheless there is no evidence. However, he's hypothesizing. And it probably was a legitimate hypothesis relative to what his finding was here.

Q. Well, how much evidence do you need to get, sir, to be conclusive that cigarette smoking is a cause of cancer?

A. Well, I don't think -- I think this is just one fraction of the whole equation dealing with whether or not cigarette smoking causes any disease.

Fist of all, this does not necessarily say -- again, in a layman's terms, I don't have -- I never went beyond biology in college, and I wasn't very good at chemistry in high school; I struggled.

But from what can determine here, this does not necessarily say that cigarettes are carcinogenic. It does not necessarily say that cigarette smoke unto itself is carcinogenic.

It says to me that in 1954, "the first report of the presence of a carcinogenic (cancer-producing) polycyclic hydrocarbon 3,4-benzopyrene in cigarette smoke was published."

That doesn't mean anything, other than

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somebody said there's the presence of an element. I'm not minimizing the importance of it or the significance.

But I believe Dr. Rodgman was saying that the purpose of this memo was to do further research to see whether or not -- what the interaction of this element was.

I cannot conclude anything more than that.

Q. Were you aware of this information when you were vice president of advertising for RJR?

A. No, I was not aware of this information, because possibly this information wasn't relevant at that point in time anymore.

I don't know the answer to that.

Q. Now, if 434,000 Americans died as a result of smoking cigarettes, that would be of significant information to you, wouldn't it?

A. It would be of significant information, yes, if that was the case.

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Q. Have you read any statistics anywhere about the number of deaths attributed to cigarette smoking?
A. I've read any number of quotes of

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statistics and absolute numbers of deaths attributable to cigarette smoking, yes.
Q. Now, do you believe that those statistics that you've read come from reliable sources?
A. I have no reason to suspect the source, essentially. However, I don't know how valid in pure terms those kinds of numbers are.
Q. If you look at Exhibit 26, which was the JAMA article, page 3188, if we can have that on the --
A. I'm sorry. What page?
Q. 3188, sir.
A. It doesn't go up that -- oh. Yes.
Q. Do you see where it says, "Although many lives have been saved, one in every five deaths in 1988 was smoking-related, and smoking directly caused 434,000 deaths in 1988."
Do you see that?
A. Yes, I see it.
Q. And those are significant numbers, are they not?
MR. LONG: Objection. Lack of foundation. Calls for speculation.
THE WITNESS: Again, the number is

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significant, yes.
BY MR. ARNOLD:
Q. In fact, let's go and look at a Footnote 2 and -- I think it's 2 and 3 cited, if we go back and look at No. 2.
And apparently, these statistics come from the Centers for Disease Control and the National Center for Health Statistics.
A. That's clear, yes.
Q. But it's still your opinion that cigarette smoking is not a cause of cancer?
MR. LONG: I object. It mischaracterizes his testimony.
THE WITNESS: It's my opinion that I do not know whether in fact cigarettes cause or are not the cause of disease. However, I do recognize it is a risk factor for certain diseases.
BY MR. ARNOLD:
Q. Well, when do we get to the point where this risk factor involved in 434,000 deaths becomes a cause?
A. I don't know if that was the risk factor in fact that caused 434,000 deaths.
Q. Well, do you want to go back and look at the article and see if it says it was related

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to smoking, or would you just accept that from my memory of what we just read?
A. I have the article in front of me. It says, according to the authors of this article, that smoking directly caused 434,000 deaths in 1988. That's what the article says.

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Q. And that's from the Centers for Disease Control, which is a division of the United States Public Health Service; is that not correct?
A. That's correct.
Q. Now, in your mind, do you believe that cigarette smoking may be a risk factor that can cause death, but it's not a cause?
A. I believe it is a risk factor.
Q. But not a cause?
A. I don't know whether it's a cause or not.
Q. It's a risk factor that children should not be exposed to; would you agree with that?
A. It's a risk factor that children should not -- are not in a position to deal with; but adults certainly are.
Q. Now, we've seen statistics that the

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majority of smokers started as children as young as 12. Is that true?
A. We've seen statistics along those lines, yes.
Q. But you have never researched the effects of cigarette advertising on whether it induces children to smoke, correct?
MR. LONG: I object to the question. It's been asked and answered six, maybe eight, maybe ten times. But if you want to take your time with that, go ahead.
THE WITNESS: As I've repeatedly responded to that very same question, I do not believe that cigarette advertising is directed or does in fact influence children to smoke cigarettes or anything else about cigarettes. Consequently, I do not believe that that is an issue.
MR. ARNOLD: I've got to move to strike as not being responsive and ask the question be read back, please.
(The record was read.)
THE WITNESS: We do not conduct research, as I've repeatedly responded to today, amongst anyone under the age of 18 years. We only conduct research against adult smokers. Consequently --

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that is my answer.
MR. ARNOLD: Thank you, sir. That concludes my part of the deposition.
MR. LONG: Give me a couple of minutes to see if I've got anything.
VIDEOTAPE OPERATOR: Off the record at 4:36.
(Brief recess.)
MR. LONG: We have no questions.
MR. LATHAM: I have no questions.
VIDEOTAPE OPERATOR: This concludes the deposition at 4:37.
(Plaintiffs' Exhibit Orlowsky No. 25 was marked.)
(TIME NOTED: 4:37 P.M.)
I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

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Executed on_____, 19____,
at_____,_____.

_____
SIGNATURE OF THE WITNESS

CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF MECKLENBURG)

I, Nancy L. Holloway, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto; nor financially or otherwise interested in the outcome of the action.

NANCY L. HOLLOWAY
Court Reporter and
Notary Public in and for
North Carolina

My Commission Expires: 10-5-02

I N D E X
VOLUME I

WEDNESDAY, NOVEMBER 11, 1998

WITNESS	EXAMINATION
MARTIN L. ORLOWSKY	
(By Mr. Arnold)	5

DEPOSITION EXHIBITS
MARTIN L. ORLOWSKY

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NUMBER	DESCRIPTION	IDENTIFIED
1	Mr. Orlowsky's RJR and Lorillard Job History	7
2	Brand Marketing Org. Chart	14
4	Research Paper by A. Rodgman	241
5	Marketing Intelligence Report, 12/14/83	153
8	Letter, 8/27/93 To: Lorillard, Inc. From: Harley-Davidson, Inc.	32
9-A	Joe Camel Ad	46
9-B	Joe Camel Ad	46
11	RJR Strategic Research Report, 2/29/84	17

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12	Presentation to RJR B of D - 9/30/74	82
13	Memo, 10/15/87 Project LF Potential	24
14	Ogburn Paper, 10/31/77	125
15	Memo, 7/22/80 To: Mr. Morrigan, Jr. From Mr. Long	89
16	Notes Post 4/12/73	53
19	Esty Summary of Findings December 1959	223
20	Product Research Report 10/30/75	215

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23	RJR Research Planning Memo	183
25	Notice of Depositions	260
26	JAMA Article, 12/11/91	55
27	JAMA Article, May 1990	165
28	RJR Planning Assumptions/	114

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		Forecast for 1977-1986	
29		Article, 11/2/59	250
		By Mr. Kenneth Hoover	

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